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LABOUR LEGISLATIONS - II

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SYLLABI-BOOK MAPPING TABLE

Labour Legislations II

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INTRODUCTION

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Labour legislation comprises of a number of legal clauses, administrative verdicts and standards. These govern the legal rights of and implement restrictions on the working of employees and employers. This legislation works as a mediator for the liaisons between trade unions, workers and owners. Labour legislations in the Indian history have been initially blended with the history of British colonialists who established their colonies in India. As expected, they upheld the interests of the British political economy. In other words, early labour legislations were more inclined to favour British colonialism. However now, the system has undergone changes along with the changes in Indian conditions.

In post-independent India, Labour legislation seeks to regulate the relations between an employer or a class of employers and their workmen. However, a major flaw of labour legislations is that most labour legislations are not applicable to unorganized labour, which constitutes about 92 per cent of the entire labour force. This book, *Labour Legislations – II* will discuss important labour legislations such as the Payment of Bonus Act, 1965, the Payment of Gratuity Act, 1972, the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, and the Industrial Employment (Standing Orders) Act, 1946.

The book has been written in keeping with the self-instructional mode or the SIM format wherein each Unit begins with an Introduction to the topic, followed by an outline of the Objectives. The detailed content is then presented in a simple and organized manner, interspersed with Check Your Progress questions to test the student's understanding of the topics covered. A Summary along with a list of Key Words, set of Self Assessment Questions and Exercises and Further Readings is provided at the end of each Unit for effective recapitulation.

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BLOCK - I

BASICS OF LABOUR LEGISLATION-II

UNIT 1 PAYMENT OF BONUS ACT: COMPUTATION OF SURPLUS

Structure

1.0 INTRODUCTION

Over the years, labour laws have undergone change with regard to their object and scope. Early labour legislations were enacted to safeguard the interest of employers. They were governed by the doctrine of *laissez faire*. Modern labour legislation, on the other hand, aims to protect workers against exploitation by employers. The advent of doctrine of welfare state is based on the notion of progressive social philosophy which has rendered the old doctrine of *laissez faire* obsolete. The theory of 'hire and fi re' as well as the theory of 'supply and demand' which found free scope under the old doctrine of *laissez faire* no longer hold good. In this unit, you will the fundamentals of the Payment of Bonus Act.

Payment of Bonus Act as the name suggests prescribes the provisions that are to be adhered to when dealing with the payments of bonuses to the employees in different companies. It was brought out in 1965 and provides rules related to applicability, definitions, calculations, offenses, dispute settlements, etc. There are 40 Sections and 4 schedules. The major amendments to the Act has been brought out previously in 2007 and 2015 and the rules have been amended thrice in 1975, 2014 and 2016.

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1.1 OBJECTIVES

After going through this unit, you will be able to:

- List the objects of the Payment of Bonus Act
- Explain the computation of tax and surplus
- Discuss the obligations and rights of employers and employees
- Recall the offences and penalties

1.2 APPROACH TO LABOUR LAWS

Labour law seeks to regulate the relations between an employer or a class of employers and their employees. The reach of this law is so wide that it touches the lives of far more people. Indeed, it covers millions of working men and women as compared to any other branch of law. It is this aspect which makes it most fascinating of all branches of law and, therefore, the study of this subject is of enormous dimension and of ever-changing facets.

There has been a remarkable change in the approach to labour law and industrial relations since World War II. Philadelphia Charter adopted in 1944 provided that 'labour is not a commodity' and that 'poverty anywhere is a danger to prosperity everywhere'.

W Friedmann and others who have tried to analyse the essential characteristics of legal development in this branch of law consider it to be a 'social duty' on the part of employer as the main bedrock on which this law is built. This is exemplified by the very approach of law makers to the construction of a wage packet of the working men and women, wage fixation and condition of service. The Indian Constitution lays down broad guidelines to be followed by the state.

The Supreme Court in *D N Banerji* v. *P R Mukherjee*, stated that the law as developed after the Second World War, particularly in a welfare state, has reversed the theories of Sir Henry Maine and now society progresses form contract to status and has witnessed considerable legislation laying down conditions of service and also ensuring payment of minimum wages by laws.

Basis of Labour Laws

Otto Kahn-Freund in his book *Labour and the Law* makes the following propositions:

(*i*) The system of collective bargaining rests on a balance of the collective forces of management and organized labour. The contribution which the courts have made to the orderly development of collective labour relations has been infinitesimal.

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(*ii*) Collective bargaining is a process by which the terms of employment and conditions of service are determined by agreement between management and the union. In effect, 'It is a business deal (which) determines the price of labour services and terms and conditions of labour's employment.'

(*iii*) The law governing labour relations is one of the central branches of law according to which a very large majority of people earn their living. Nonetheless, law is a secondary force in human relations, especially in labour relations.

(*iv*) Law is a technique for regulation of social power. This is as true of labour law as it is for other aspects of any legal system. Labour law also seeks to lay down minimum standard of employment. It lays down norms by which basic conditions of labour are fulfilled such as maximum working hours, minimum safety conditions, minimum provisions for holidays and leave, protection for women and children from arduous labour, prohibition of children below certain age from employment, provisions for minimum standards of separation benefits and certain provision for old age.

International Labour Organization and Its Influence on Indian Labour Laws

The International Labour Organization (ILO) has played a key role in promoting international labour standards. It was set up in 1919 under the Treaty of Versailles. India is a founder member of ILO.

There are certain fundamental principles of the ILO that were laid down at the time of its inception. These principles are known as the Charter of Freedom of Labour. The main principles of ILO are as follows:

- Labour is not a commodity.
- Freedom of expression and of association are essential to sustained progress.
- Poverty anywhere constitutes danger to prosperity everywhere.
- The war against want requires to be carried on with unrelenting vigour within each nation and by continuance and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of the governments, join with them in free discussion and democratic decision with a view to promotion of common welfare.

The aforesaid principles were modified at the 26th session of ILO held in Philadelphia in 1944. It also adopted a Declaration that concerns with the aims and purposes of the organization. This Declaration is known as the Philadelphia Charter.

By 2008, ILO had adopted 190 conventions and 198 recommendations. India had ratified 47 of the 190 conventions and one protocol. The Constitution of India and labour legislation uphold all the fundamental principles envisaged in the 8 core international labour standards. It ratified 6 of the 8 core conventions of ILO.

With regard to the others, India seeks to proceed with progressive implementation of the concerned standards and leave the formal ratification for consideration at a later stage when it becomes practicable.

The ILO has influenced labour legislation in India. Most labour legislation has been enacted in conformity with ILO conventions.

Today, the ILO stands as one of the specialized agencies of the United Nations with longer history than any of its sister organizations.

A Structure and Activities

The ILO is a tripartite organization consisting of representatives of governments, employers and workers of the member-countries. There is parity of representation as between government and non-government groups and also between employers' and workers' groups.

The structure of the organization has helped in welding together employers and workers in various countries (including India) into independent organizations. In our country, for a long time now the representatives of employers and workers have secured, through their respective constituencies, elective posts on the Governing Body of the ILO.

The ILO operates through its (*i*) Governing Body; (*ii*) International Labour Office; and (*iii*) the International Labour Conference, which meets once a year to review the international labour scene.

B. Making of International Labour Standard

The annual conference sets normative standards on important matters such as regulation of hours of work and weekly rest in industry, equal remuneration for equal work, abolition of forced labour, discrimination in employment, protection of workmen against sickness, disease and work-injury, regulation of minimum wages, prohibition of night work for women and young persons, recognition of the principle of freedom of association, organization of vocational and technical education, and many areas concerning labour management relations.

The standards are evolved after a full debate in the Conference. Usually the standards are accepted after discussions in the Conference over two successive years. Agreed standards on a specified subject are then converted into an international instrument, a 'Convention' or a 'Recommendation', each having a different degree of compulsion. A 'Convention' is binding on the member-state which ratifies it; a 'Recommendation' is intended as a guideline for national action.

C. ILO Declaration on Fundamental Principles and Rights at Work

The ILO declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference in June 1998, declares *inter alia* that all member states, whether they have ratified the relevant conventions or not, have an

obligation to respect, promote and realize the principles concerning the fundamental rights which are the subject of those conventions, namely:

(*a*) Freedom of association and the effective recognition of the right to collective bargaining;

(*b*) Elimination of all forms of forced or compulsory labour;

(*c*) Effective abolition of child labour; and

(*d*) Elimination of discrimination in respect of employment and occupation.

The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The goal is not just the creation of jobs but the creation of jobs of acceptable quality.

The Government of India has ratified Convention 122 on Employment and Social Policy in 1998.

Article 1 of the Convention lays down:

1. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements, and overcoming unemployment and under employment, each member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.
2. The said policy shall aim at ensuring that:
   (*a*) There is work for all who are available for and seeking work;
   (*b*) Such work is as productive as possible;
   (*c*) There is freedom of choice of employment and fullest possible opportunity for each worker to qualify for, and to use skill and the endowments in a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.
3. The said policy shall take due account of the state and the level of economic development and mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices.

The aforesaid convention was ratified by India at a time when unemployment levels were high. One, therefore, has to presume that the government is now committed to pursue an active policy designed to promote full, productive and freely chosen employment.

From the commitments of the Government of India, it can be deduced that the following rights of workers have been recognized as inalienable and must, therefore, accrue to every worker under any system of labour laws and labour policy. These are:

(*a*) Right to work of one's choice
(*b*) Right against discrimination
(*c*) Prohibition of child labour
(*d*) Just and humane conditions of work
(*e*) Right to social security
(*f*) Protection of wages including right to guaranteed wages
(*g*) Right to redressal of grievances
(*h*) Right to organize and form trade unions and right to collective bargaining
(*i*) Right to participation in management

Now that you have learnt about the basics of labour laws, you will now study one of the important labour legislations: Payment of Bonus Act, 1965.

Check Your Progress

1. What did the Philadelphia Charter provide?
2. When was the ILO set up?

1.3 PAYMENT OF BONUS ACT: COMPUTATION AND OBLIGATIONS

As mentioned earlier, the Payment of Bonus Act was brought out in the year 1965, but its origin in India can be traced back to the textile mills providing war bonuses to their workers in 1917. It was later, after independence, that through the work of various labour committees and the major Tripartite Commission, the recommendations were incorporated to specify the formula for the calculation of bonuses and the related nuances. This resulted in the promulgation of the Payment of Bonus Ordinance in 1965, which was later converted into the full Act: the Payment of Bonus Act, 1965. In the unit, you will study the objects, scope and coverage, computation of available surplus, calculation of direct tax payable by the employer, the obligations and rights of the employees and the employers as well as the provisions of offences and penalties.

1.3.1 Objects and Scope

Broadly speaking, the scheme of the Act is four dimensional:

(i) To impose statutory liability upon the employers of the establishments covered by the Act to pay bonus to employees in the establishments
(ii) To define the principles for payment of bonus according to the prescribed formula

(iii) To provide for the payment of minimum and maximum bonus and linking the payment of bonus with the scheme of 'set-off and set-on'

(iv) To provide machinery for enforcement of the liability for the payment of bonus, with a view to minimize the disputes on this account

Scope and coverage

The Act extends to the whole of India and is applicable to every factory (as defined under the Factories Act) and to every other establishment wherein twenty or more workmen are employed on any day during an accounting year. The Central/State Government can, however, extend its provisions to any establishment employing less than twenty but more than ten people. For the purpose of calculating the number of employees for the applicability of the Act, part-time employees are also included, irrespective of the amount of salary drawn by them. The employment of twenty or more persons on even one day in a year is sufficient to attract the provisions of the Act.

Any factory or establishment to which this Act applies shall continue to be governed by its provisions irrespective of the fact that the number of employees working therein has fallen below twenty or the number specified by the government, as the case may be.

For the purpose of counting the number of employees and calculation of bonus, employees working in the branches/departments of the same establishment whether situated in the same place or in different establishments, functioning in the same premises, shall not be clubbed together.

Where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any department or branch, then such department or branch shall be treated as a separate establishment for the purpose of computation of bonus for that year, unless such department or branch was, immediately before the commencement of that accounting year, treated as part of the establishment for the purpose of computation of bonus.

1.3.2 Computation of Available Surplus and Calculation of Direct Tax Payable by the Employer

The method for calculation of annual bonus is as follows:

1. Calculate the gross profit in the manner specified in:
   (a) First Schedule, in case of a banking company, or
   (b) Second Schedule, in any other case.

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Table 1.1 *First Schedule of the Payment of Bonus Act, 1965*

Item No.	Particulars	Amt. of sub- Items Rs.	Amt. of main Items Rs.	Remarks
*1.	Net Profit as shown in the profit and loss account after making usual and necessary provisions.			
2.	Add back provision for: (a) Bonus to employees (b) Depreciation (c) Development Rebate Reserve (d) Any other reserves Total of Item No.2………..	Rs…………		** **
3.	Add back also: (a) Bonus paid to employees in respect of previous accounting years. (b) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of – (i) the amount, if any, paid to, or provided for payment to, an approved gratuity fund; and (ii) the amount actually paid to employees on their retirement or on termination of their employment for any reason. (c) Donations in excess of the amount admissible for income-tax .			**
	(d) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income tax).			**
	(e) Any amount certified by the Reserve Bank of India in terms of sub-section (2) of section 34A of the Banking Regulation Act, 1949 (10 of 1949). (f) Losses of , or expenditure relating to, any business situated outside India. Total of Item No.3………..	Rs…………		

4.	Add also income, profits or gains (if any) credited directly to published or disclosed reserves, other than- (i) capital receipts and capital profits (including profits on the sale of capital assets on such depreciation has not been allowed for income-tax); (ii) profits of, and receipts relating to , any business situated outside India; (iii) income of foreign banking companies from investment outside India. Net total of Item No.4…….	Rs…………		
5.	Total of Item Nos.1,2,3& 4…	Rs…………		
6.	Deduct : (a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax). (b) Profits of, and receipts relating to any business situated outside India.			*** ***
	(c) Income of foreign banking companies from investments outside India . (d) Expenditure or losses (if any) debited directly to published or disclosed reserves, other than – (i) capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax); (ii) losses of any business situated outside India.			***
	(e) In the case of foreign banking companies proportionate administrative (overhead) expenses of head-office allocable to Indian business. (f) Refund of any excess direct tax paid for previous accounting years and excess provision if any of previous accounting years, relating to bonus, depreciation or development rebate, if written back. (g) Cash subsidy, if any, given by the government or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes . Total of Item No. 6 ……	Rs…………		*** *** ***
7.	Gross profits for purposes of bonus (Item No. 5 minus Item No. 6)		Rs……………..	

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***Explanation* :** In sub-item (b) of Item 3, "approved gratuity fund" has the same meaning assigned to it in clause (5) of section 2 of the Income Tax Act.

* Where the profit subject to taxation is shown in the profit and loss account and the provision made for taxes on income is shown, the actual provision for taxes on income shall be deducted from the profit.

** If, and to the extent, charged to Profit and Loss Account.

*** If, and to the extent, credited to Profit and Loss Account.

**** In the proportion of Indian Gross Profit (Item No. 7) to Total World Gross Profit (as per consolidated profit and loss account adjusted as in Item No. 2 above only)]

Table 1.2 *Second Schedule of the Payment of Bonus Act, 1965*

Item No.	*Particulars*	*Amt. Of sub-Items* Rs.	*Amt. Of main Items* Rs.	*Remarks*
1.	Net profit as per profit and loss account			
2.	Add back provision for : (a) Bonus to employees (b) Depreciation. (c) Direct taxes, including the provision (if any), for previous accounting years (d) Development rebate / investment allowance / development allowance reserve. (e) Any other reserves Total of Item No.2 ……..	Rs. ……… ..		* *
3.	Add back also : (a) Bonus paid to employees in respect of previous accounting years. (aa) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of- (i) the amount, if any, paid to, or provided for payment to, an approved gratuity fund; and (ii) the amount actually paid to employees on their retirement or on termination of their employment for any reason. (b) Donations in excess of the amount admissible for income-tax . (c) Any annuity due, or commuted value of any annuity paid, under the provisions of section 280D of the Income Tax Act during the accounting year.			*

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	(d) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income tax or agricultural income-tax.). (e) Losses of , or expenditure relating to, any business situated outside India. Total of Item No.3 ……….	Rs……… …..		*
4.	Add also income, profits or gains (if any) credited directly to reserves, other than-			
	(i) capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax);			
	(ii) profits of, and receipts relating to, any business situated outside India; (iii) income of foreign concerns from investments outside India. Net total of Item No.4 ……..	Rs……… ….		
5.	Total of Item Nos. 1,2,3 and 4…	Rs……… …..		
6.	Deduct : (a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax or agricultural income-tax). (b) Profits of, and receipts relating to, any business situated outside India. (c) Income of foreign concerns from investment outside India. (d) Expenditure or losses (if any) debited directly to reserves, other than- (i) capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax ; or agricultural income-tax; (ii) losses of any business situated outside India. (e) In the case of foreign concerns proportionate administrative (overhead) expenses of head office allocable to Indian business. (f) Refund of any direct tax paid for previous accounting years and excess			** ** ** *** **

	provision, if any, of previous accounting years relating to bonus, depreciation, taxation or development rebate or development allowance, if written back. (g) Cash subsidy, if any, given by the government or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes. Total of Item No.6	Rs……… …..		** ** ** *** **
7.	Gross Profits for purposes of bonus (Item No.5 minus Item No.6)	Rs……… ….		

Explanation **:** In sub-item (aa) of Item 3, "approved gratuity fund" has the same meaning assigned to it in clause (5) of section 2 of the Income Tax Act.

* If, and to the extent, charged to Profit and Loss Account.

** If, and to the extent, credited to Profit and Loss Account.

*** In the proportion of Indian Gross Profit (Item No. 7) to Total World Gross Profit (as per consolidated profit and loss account, adjusted as in Item No. 2 above only).

2. Calculation of available surplus
   (a) Gross Profit = X
   (b) Depreciation admissible u/s 32 of the Income Tax Act = A
   (c) Development rebate or investment allowance or development allowance = B
   (d) Direct Taxes which the employer is liable to pay in the accounting year = C
   (e) Such further Sums specified in the Third Schedule = D

$$\text{Available Surplus} = X - (A + B + C + D)$$

Table 1.3 *Third Schedule of the Payment of Bonus Act, 1965*

Item No.	Category of employer	Further sums to be deducted
1.	Company, other than a banking company.	(i) The dividends payable on its preference share capital for the accounting year calculated at the actual rate at which such dividends are payable; (ii) 8.5 percent of its paid up equity share capital as at the commencement of the accounting year; (iii) 6 percent of its reserves shown in its balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year : **PROVIDED** that where the employer is a foreign company within the meaning of section 591 of the Companies Act ,1956 (1of 1956) , the total amount to be deducted under this item shall be 8.5 percent on the aggregate of the value of the net fixed assets and the current assets of the company in India after deducting the amount of its current liabilities (other than any amount shown as payable by the company to its Head Office whether towards any advance made by the Head Office or otherwise or any interest paid by the company to its Head Office) in India.

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2.	Banking company	(i) The dividends payable on its preference share capital for the accounting year calculated at the rate at which such dividends are payable ; (ii) 7.5 per cent of its paid up equity share capital as at the commencement of the accounting year ; (iii) 5 percent of its reserves shown in its balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year; (iv) any sum which, in respect of the accounting year, is transferred by it- (a) to a reserve fund under sub-section (1) of section 17 of the Banking Regulation Act, 1949 (10 of 1949); or (b) to any reserves in India in pursuance of any direction or advice given by the Reserve Bank of India, whichever is higher: **PROVIDED** that where the banking company is a foreign company within the meaning of section 591 of the Companies Act , 1956 (1of 1956), the amount to be deducted under this item shall be the aggregate of- (i) the dividends payable to its preference shareholders for the accounting year at the rate at which such dividends are payable on such amount as bears the same proportion to its total preference share capital as its total working funds in India bear to its total world working funds; (ii) 7.5 per cent of such amount as bears the same proportion to its total paid up equity share capital as its total working funds in India bear to its total working funds. (iii) 5 per cent of such amount as bears the same proportion to its total disclosed reserves as its total working funds in India bear to its total world working funds; (iv) any sum which, in respect of the accounting year, is deposited by it with the Reserve Bank of India under sub-clause (ii) of clause (b) of sub-section (2) of section 11 of the Banking Regulation Act, 1949 (10 of 1949) , not exceeding the amount required under the aforesaid provision to be so deposited.]
3.	Corporation	(i) 8.5 per cent of its paid up capital as at the commencement of the accounting year; (ii) 6 per cent of its reserves, if any, shown in its balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year.
4.	Co-operative society	(i) 8.5 per cent of the capital invested by such society in its establishment as evidenced from its books of accounts at the commencement of the accounting year;
		(ii) such sums as has been carried forward in respect of the accounting year to a reserve fund under any law relating to co-operative societies for the time being in force.

5.	Any other employer not falling under any of the aforesaid categories	8.5 per cent of the capital invested by him in his establishment as evidenced from his books of accounts at the commencement of the accounting year: **PROVIDED** that where such employer is a person to whom Chapter XXII-A of the income Tax Act applies , the annuity deposit payable by him under the provisions of that Chapter during the accounting year shall also be deducted: **PROVIDED FURTHER** that where such employer is a firm, an amount equal to 25 per cent of the gross profits derived by it from the establishment in respect of the accounting year after deducting depreciation in accordance with the provisions of clause (a) of section 6 by way of remuneration to all the partners taking part in the conduct of business of the establishment shall also be deducted, but where the partnership agreement, whether oral or written, provides for the payment of remuneration to any such partner, and – (i) the total remuneration payable to all such partners is less than the said 25 per cent the amount payable, subject to a maximum of forty-eight thousand rupees to each such partner; or (ii) the total remuneration payable to all such partners is higher than the said 25 percent , such percentage, or a sum calculated at the rate of forty – eight thousand rupees to each such partner, whichever is less , shall be deducted under this proviso: **PROVIDED ALSO** that where such employer is an individual or a Hindu Undivided Family -
		(i) an amount equal to 25 per cent of the gross profits derived by such employer from the establishment in respect of the accounting year after deducting depreciation in accordance with the provisions of clause (a) of section 6; or (ii) forty-eight thousand rupees, whichever is less by way of remuneration to such employer, shall also be deducted.
6.	Any employer falling under Item No.1 or Item No. 3 or Item No. 4 or Item No. 5 and being a licensee within the meaning of the Electricity (Supply) Act, 1948 (54 of 1948) .	In addition to the sums deductible under any of the aforesaid Items, Such sums as are required to be appropriated by licensee in respect of the accounting year to a reserve under the Sixth Schedule to that Act shall also be deducted.

Explanation **:** The expression "reserves" occurring in column (3) against Item Nos. 1(iii), 2(iii) and 3(ii) shall not include any amount set apart for the purpose of,-

(i) payment of any direct tax which, according to the balance-sheet, would be payable;

(ii) meeting any depreciation admissible in accordance with the provisions of clause (a) of section 6;

(iii) payment of dividends which have been declared, but shall include,-

(a) any amount, over and above the amount referred to in clause-(i) of this Explanation, set apart as specific reserve for the purpose of payment of any direct tax; and

(b) any amount set apart for meeting any depreciation in excess of the amount admissible in accordance with the provisions of clause (a) of section 6.

3. Calculation Allocable Surplus

   Allocable Surplus = 67 per cent of Available Surplus in case of company other than Banking Company; 60 per cent in other cases.

4. Make adjustment for 'Set-on' and 'Set-off'. For calculating the amount of bonus in respect of an accounting year, allocable surplus is computed after considering the amount of set-on and set-off from the previous years, as illustrated in the Fourth Schedule.

   This concept will be dealt in Unit 4.

Table 1.4 *Fourth Schedule of the Payment of Bonus Act, 1965*

Year	Amount equal to sixty per cent or sixty-seven per cent, as the case may be, of available surplus allocable as bonus	Amount payable as bonus	Set on or Set off of the year carried forward	Total set on or set off carried forward	
	Rs.	Rs.	Rs.	Rs.	Of (year)
1.	1,04,167	1,04,167#	Nil	Nil	
2.	6,35,000	2,50,000*	Set on 2,50,000*	Set on 2,50,000*	(2)
3.	2,20,000	2,50,000* (inclusive of 30,000 from year-2)	Nil	Set on 2,20,000	(2)
4.	3,75,000	2,50,000*	Set on 1,25,000	Set on 2,20,000 1,25,000	(2) (4)
5.	1,40,000	2,50,000* (inclusive of 1,10,000 from year-2)	Nil	Set on 1,10,000 1,25,000	(2) (4)
6.	3,10,000	2,50,000*	Set on 60,000	Set on Nil ## 1,25,000 60,000	(2) (4) (6)
7.	1,00,000	2,50,000* (inclusive of 1,25,000 from year-4 and 25,000 from year-6)	Nil	Set on 35,000	(6)
8.	Nil (due to loss)	1,04,167# (inclusive of 35,000 from year-6)	Set on 69,167	Set off 69,167	(8)
9.	10,000	1,04,167#	Set off 94,167	Set off 69,167 94,167	(8) (9)
10.	2,15,000	1,04,167# (after setting off 69,167 from year-8 and 41,666 from year-9)	Nil	Set off 52,501	(9)

* Maximum amount admissible.

Minimum amount admissible.

The Balance of Rs. 1,10,000 set on from year-2 lapses;

5. The allocable surplus so computed is distributed among the employees in proportion to the salary or wages received by them during the relevant accounting year.
6. In the case of an employee receiving salary or wages between ₹2,500 and ₹,500 per month, the bonus payable to him is to be calculated as if his salary or wages were ₹2,500 per month only.

Calculation of Direct Tax Payable by the Employer

As per Section 7 of the Payment of Bonus Act:

The following provisions are to be considered while calculating the direct tax payable by the employer:

(a) The following items are not be taken in account while calculating such tax:
   (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
   (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of section 32 of the Income Tax Act;
   (iii) any exemption conferred on the employer under section 84 of the Income Tax Act or of any deduction to which he is entitled under sub-section (1) of section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965 (10 of 1965);

(b) Where the employer is a religious or a charitable institution to which the provisions of section 32 do not apply and the whole or any part of its income is exempt from tax under the Income Tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;

(c) where the employer is an individual or a Hindu Undivided Family, the tax payable by such employer under the Income Tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;

(d) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;

(e) no account shall be taken of any rebate [other than development rebate or investment allowance or development allowance] or credit or relief or deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

1.3.3 Obligations and Rights of Employers and Employees

Let's check briefly the obligations and rights of the employers and employees.

Obligations of employers

The main obligations of an employer are as follow:

(1) To calculate and pay the annual bonus as required under the Act

(2) To maintain the following registers:

  (a) Register showing the computation of allocable surplus in Form A

  (b) Register showing set-on and set-off of the allocable surplus in Form B

  (c) Register showing details of the amount of bonus due to each employee, deductions therefrom and the amount disbursed in Form C.

(3) To submit an annual return of bonus paid to employees during the year in Form D to the Inspector within thirty days of the expiry of the time limit specified for the payment of bonus.

(4) To cooperate with the Inspector, produce before him the registers/records maintained, and such other information as may be required by them.

(5) To get his account audited as per the directions of a Labour Court/Tribunal or of any other such authority issued under Section 25.

Rights of employers

An employer has the following rights:

(1) The right to forfeit bonus of an employee who has been dismissed from service for fraud, riotous or violent behaviour, theft, misappropriation or sabotage of any property of the establishment.

(2) Right to make permissible deductions from the bonus payable to an employee, such as, festival/interim bonus paid and financial loss caused by misconduct of the employee.

(3) Right to refer any dispute relating to application or interpretation of any provision of the Act to the Labour Court or Labour Tribunal.

Rights of employees

(1) Right to claim bonus payable under the Act and to make an application to the Government, for the recovery of bonus due and unpaid, within one year of its becoming due.

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(2) Right to refer any dispute to the Labour Court or Tribunal. Employees, to whom the Payment of Bonus Act does not apply, cannot raise a dispute regarding bonus under the Industrial Disputes Act.

1.3.4 Offences and Penalties

Section 28 and 29 of the payment of Bonus Act deals with provisions of offences and penalties.

Any person who contravenes the provisions of the Act or rules made thereunder or fails to comply with any direction or requisition made is punishable with imprisonment up to six months or with a fine up to ₹1000, or both.

In the case of offences by a company, firm, body corporate or an association of individuals, the director, partner or principal officer responsible for the conduct of its business, as the case may be, shall be deemed to be guilty of that offence and punished accordingly, unless the person concerned proves that the offences were committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Check Your Progress

3. State the formula for allocable surplus as per the Payment of Bonus Act.
4. Mention the registers that are to be maintained by the employers as per the Payment of Bonus Act.
5. What is the time frame within which the employees can make an application for recovery of bonus due and unpaid?

1.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. Philadelphia Charter adopted in 1944 provided that 'labour is not a commodity' and that 'poverty anywhere is a danger to prosperity everywhere'.
2. The International Labour Organization (ILO) has played a key role in promoting international labour standards. It was set up in 1919 under the Treaty of Versailles.
3. As per the Payment of Bonus Act, the formula for calculating allocable surplus is:

   Allocable surplus: 67 per cent of Available Surplus in case of company other than Banking Company; 60 per cent in other cases.
4. As per the Payment of Bonus Act, the following registers are to be maintained by the employers:

- Register showing the computation of allocable surplus in Form A
- Register showing set-on and set-off of the allocable surplus in Form B
- Register showing details of the amount of bonus due to each employee, deductions therefrom and the amount disbursed in Form C

5. Right to claim bonus payable under the Act and to make an application to the Government, for the recovery of bonus due and unpaid, within one year of its becoming due.

1.5 SUMMARY

- The scheme of the Payment of Bonus Act is considered to be four dimensional including functions such as: imposing statutory liability upon the employers covered, defining the principles for payment of bonus, providing for the payment of minimum and maximum bonus and linking the payment of bonus with the scheme of 'set-off and set-on', and providing machinery for enforcement with a view to minimize the disputes on this account.
- The Payment of Bonus Act extends to the whole of India and is applicable to every factory (as defined under the Factories Act) and to every other establishment wherein twenty or more workmen are employed on any day during an accounting year.
- The method for calculation of annual bonus requires the following calculations: calculation of gross profit, available surplus, allocable surplus including provisions for adjustments of set-on and set-off.
- The Payment of Bonus Act contains provisions related to the obligations and rights for employers and employees.
- Any person who contravenes the provisions of the Act or rules made thereunder or fails to comply with any direction or requisition made is punishable with imprisonment up to six months or with a fine up to ₹1000, or both.

1.6 KEY WORDS

- **Statutory liability:** It refers to the legal term indicating the liability of a party who may be held responsible for any action or omission due to a related law that is not open to interpretation
- **Available surplus:** It refers to the gross profits for that year after deducting there from the sums
- **Set on:** It refers to provision wherein if the allocable surplus exceeds the amount of maximum bonus payable as prescribed, then, the excess is carried forward for being set on in the succeeding accounting year and so on as mentioned in the Act.

- **Set off:** It refers to the provision wherein if there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment as prescribed, then such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on as mentioned in the Act.

1.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. Write a short note on the basis and approach to labour laws.
2. How many conventions and protocols of the ILO have been ratified by India?
3. How is the Payment of Bonus Act four dimensional?
4. Briefly explain the scope and coverage of the Payment of Bonus Act.
5. What is the provision for offences and penalties as mentioned in the Payment of Bonus Act?

Long Answer Questions

1. Examine the International Labour Organization's influence on Indian Labour Laws.
2. Describe the steps involved in the calculation of the annual bonus.
3. Discuss the obligations and rights of the employers and employees as mentioned in the Payment of Bonus Act.

1.8 FURTHER READINGS

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

Kuchhal, M C. 2012. *Business and Industrial Laws, Second Edition*. New Delhi: Vikas Publishing House.

Padhi, P K. 2017. *Labour and Industrial Laws, Third Edition*. New Delhi: PHI Learning.

UNIT 2 PAYMENT OF BONUS ACT: ELIGIBILITY AND PAYMENT

Structure

2.0 INTRODUCTION

As discussed in the previous unit, the Payment of Bonus Act extends to the whole of India and is applicable to every factory (as defined in the Factories Act) and to every other establishment wherein twenty or more workmen are employed on any day during an accounting year. You also learnt the manner of calculation of the bonus. In this unit, we turn towards another important concept under the Act: eligibility. It will be illogical to assume that a worker who has joined yesterday and a worker who has been working in an organization for six months are both eligible for the bonus. Further, there are questions of whether the attitude and actions of the worker has any bearing on the bonus that is accrued to him. In this unit, you will learn about concept of eligibility and payment of bonus as well as the provisions related to deductions from the bonus.

2.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the provisions related to eligibility of bonus
- Explain the manner of payment of bonus
- Describe the rules related to the deduction from bonus payable

2.2 ELIGIBLITY OF BONUS AND PAYMENT OF BONUS

NOTES

Sections 8-14 of the Payment of Bonus Act deals with the provisions related to the eligibility of bonus, payment of bonus as well as deductions of bonus. In this section, you will learn about the eligibility of bonus as well as payment of bonus.

According to Section 8, every employee shall be entitled to be paid bonus by his employer in an accounting year, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

Disqualification for bonus

Section 9 prescribes: Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for the following reason:

(a) Fraud
(b) Riotous or violent behaviour while on the premises of the establishment
(c) Theft, misappropriation or sabotage of any property of the establishment

Bonus is payable only annually and it cannot be directed to be paid on a half-yearly basis.

Every employee receiving salary or wages up to ₹21,000 (Amended Through the Payment of Bonus (Amendment) Act, 2015 per month and engaged in any kind of work whether:

(i) Skilled, unskilled or manual,
(ii) Managerial staff,
(iii) Supervisory staff,
(iv) Administrative staff,
(v) Technical staff, or
(vi) Clerical staff

is entitled to bonus for every accounting year, if he has worked for at least thirty working days in that year.

A probationer is eligible for bonus. Bonus is payable to daily wage workers as well. An apprentice is not eligible for bonus.

Exempted establishment

As per section 32 of the Act, the employees of the LIC, Seaman as defined under the Merchant Shipping Act, Central/State Government Establishments and local authority, Indian Red Cross Society, University and Educational and Educational Institution, Hospitals, Chambers of Commerce, RBI, IFCI and any financial corporation under the State Financial Corporation Act, UTI, Development Bank

of India, any other financial institution being an establishment in public sector notified by the Central Government, Social Welfare Institutions, Inland Water Transport Corporation are not entitled to bonus under this Act.

Quite apart from above institutions, the appropriate government is also empowered to exempt an establishment or class of establishment from the operation of any of the provisions of the Act.

2.2.1 Payment of Bonus

In this section, you will learn about the provisions related to payment of bonus.

Payment of minimum bonus

Section 10: In this provides that 'subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or ₹100, whichever is higher, whether or not the employer has any allocable surplus in the accounting year. As per Amendment Act, 2015, the minimum that can be paid has been increased to ₹583 (or 8.33% of the minimum wages, which ever in higher). However, where an employee has not completed fifteen years of age at the beginning of the accounting year, the minimum bonus will be either 8.33 per cent or ₹60 instead of ₹100, whichever is higher.

Contracting out is void

All contracts or agreements depriving the employees of their right to receive minimum bonus shall be void and not enforceable.

Payment of maximum bonus

Section 11 provides:

1. Where in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of 20 per cent of such salary or wage. As per the Amendment Act, 2015, the calculation is done on 25% of ₹7,000 (or minimum wages, wherever higher).
2. In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of Section 15 shall be taken into account in accordance with the provisions of that section.

Time limit and mode of payment of bonus

Section 19 of the Payment of Bonus Act deals with the Time-limit for payment of bonus. Bonus should be paid in cash and within eight months from the close of the

accounting year or within one month, where there is a dispute, from the date of enforcement of the award or coming into operation of a settlement, following an industrial dispute regarding the payment of the bonus. However, an employer may apply for extension of a period of eight months up to two years, if there is a sufficient cause.

2.2.2 Deduction from Bonus Payable

According to Section 18, wherein any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

Deductions permissible from bonus

The following amounts can be adjusted against the amount of bonus payable:

(1) Any customary/festival/interim bonus paid

(2) Any financial loss caused by misconduct of the employee

Check Your Progress

1. Mention the minimum number of working days an employee is expected to complete for being eligible for the bonus.
2. Is an apprentice eligible for bonus?
3. What is the time limit for the payment of bonus?

2.3 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The minimum number of working days an employee is expected to complete for being eligible for the bonus is at least thirty days.
2. No, an apprentice is not eligible for bonus.
3. Bonus should be paid in cash and within eight months for the close of the accounting year or within on month, where there is a dispute, from the date of enforcement of the award or coming into operation of a settlement, following an industrial dispute regarding the payment of bonus.

2.4 SUMMARY

- According to Section 8 of the Payment of Bonus Act, every employee shall be entitled to be paid bonus by his employer in an accounting year, in

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accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

- Section 9 of the Act mentions the reasons which can cause the employees to be disqualified from being eligible for the bonus.
- A probationer is eligible for bonus. Bonus is payable to daily wage workers as well. An apprentice is not eligible for bonus.
- The payment of minimum bonus is calculated as per Section 10 of the Act which prescribes the amount ₹583 (or 8.33% of the minimum wages, whichever is higher.)
- Section 11 of the Act prescribes that the calculation is done on 20% of ₹7,000 (or minimum wages, whichever is higher).
- Section 18 of the Act prescribes that, wherein any accounting year, an accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in any respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

2.5 KEY WORDS

- **Probationer:** It refers to a person who is serving a probationary or trial period in a job or position to which they are newly appointed.
- **Apprentice:** It a person who is learning a trade from a skilled employer, having agreed to work for a fixed period at low wages.
- **Establishment in public sector:** It means an establishment owned, controlled or managed by,- (a) a government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); (b) a corporation in which not less than forty per cent of its capital is held (whether singly or taken together) by,- (i) the government; or (ii) the Reserve Bank of India; or (iii) a corporation owned by the government or the Reserve Bank of India.

2.6 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. What are the reasons which make an employee face disqualification for bonus?
2. Write a short note on deductions permissible and forfeiture of bonus.

Long Answer Questions

1. Describe the employees eligible and establishments exempted from payment of bonus.
2. Explain, in detail, the provisions related to the payment of minimum and maximum bonus.

2.7 FURTHER READINGS

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

Kuchhal, M C. 2012. *Business and Industrial Laws, Second Edition*. New Delhi: Vikas Publishing House.

Padhi, P K. 2017. *Labour and Industrial Laws, Third Edition*. New Delhi: PHI Learning.

UNIT 3 PAYMENT OF BONUS ACT: ADJUSTMENT

NOTES

Structure

3.0 INTRODUCTION

The Payment of Bonus Act, 1965 takes into account different provisions while making the calculation for the bonus which is to be accrued to each employee. You have studied different criterion in the previous unit which makes an employee eligible, non-eligible for and disqualified from getting a bonus. The provisions related to the payment of bonus was also discussed which mentioned criteria like maximum and minimum bonus as well as the time limit and mode of payment. In this you, you will learn about the adjustments which are made for the bonus that is given to the employees. This will include topics like calculation for certain employees, proportionate reduction and number of working days to be calculated. You will then study the concept of adjustment of customary or interim bonus linked with production or productivity.

3.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the concept of proportionate reduction of bonus
- Describe the calculation of bonus for certain employees
- Explain the provisions related to adjustment of customary or interim bonus linked with production or productivity

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3.2 ADJUSTMENT OF CUSTOMARY OR INTERIM BONUS LINKED WITH PRODUCTION OR PRODUCTIVITY

In this section, you will learn about the provision of adjustment of customary or interim bonus linked with production. But, before that, let's discuss some important provisions related to calculation of bonus in different cases.

Calculation of bonus with respect to certain employees

As per the Payment of Bonus (Amendment) Act 2015: Section 12 provides that: Where the salary or wages of an employee exceeds ₹ 7000 per month (or the minimum wage for the scheduled employment as fixed by the appropriate Government, whichever is higher), the bonus payable to such employee under section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wages were ₹ 7000 per month (or the minimum wage for the scheduled employment as fixed by the appropriate Government, whichever is higher).

Further, —For the purposes of this section, the expression ''scheduled employment'' shall have the same meaning as assigned to it in clause (g) of section 2 of the Minimum Wages Act, 1948.'

Proportionate reduction in bonus in certain cases

Section 13 provides that 'where an employee has not worked for all the working days in an accounting year, the minimum bonus of ₹583 or, as the case may be, of ₹60, if such bonus is higher than 8.33 per cent of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced'.

Thus, the minimum bonus is to be proportionately reduced by reference to the number of days an employee has worked. The bonus is payable on the salary or wages earned by an employee in respect of an accounting year. The payment received by way of encashment of leave cannot be taken into account for the payment of bonus.

Computation of the number of working days for the purposes of Section 14

Section 14: provides that an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which

(a) He has been laid-off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

(b) He has been on leave with salary or wage;

(c) He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(d) The employee has been on maternity leave with salary or wage, during the accounting year.

Thus, **'working days'** include days of leave, lay-off, and so on.

Provisions Related to Adjustment of Customary or Interim Bonus Linked with Production or Productivity

Where the employee enters into an agreement or settlement with his employer for the payment of an annual bonus linked with production or productivity in lieu of bonus based on profits, he shall be entitled to receive bonus due to him under such agreement or settlement, subject to a minimum of 8.33 per cent and a maximum of 20 per cent of the salary or wages earned by him during the relevant accounting year. The Payment of Bonus Act principally dealt with profit bonus, hence customary bonus, or bonus as an implied term or condition of service was outside the purview of the Bonus Act.

Section 31A: provides that 'notwithstanding anything contained in this Act,

(i) Where an agreement or a settlement has been entered into by the employees with their employer before the commencement of the Payment of Bonus (Amendment) Act, 1976 (23 of 1976), or

(ii) Where the employees enter into any agreement or settlement with their employer after such commencement,

For the payment of an annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then such employees shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be:

Provided that any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus under Section 10 shall be null and void in so far as it purports to deprive them of such right.

Such employees shall not be entitled to be paid such bonus in excess of 20 per cent of the salary or wage earned by them during the relevant accounting year.

Adjustment of Customary or Interim Bonus Payable under the Act

Section 17 provides that 'in cases where, in any accounting year,

(a) An employer has paid a *puja* bonus or any other customary bonus to an employee, or

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(b) An employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable,

the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance.

Check Your Progress

1. Which type of bonus did the Payment of Bonus Act principally dealt with?
2. Name the Section of the Payment of Bonus Act which deals with the computation of the number of working days.

3.3 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The Payment of Bonus Act principally dealt with profit bonus, hence customary bonus or bonus as an implied term or condition of service was outside the purview of the Bonus Act.
2. Section 14 of the Payment of Bonus Act deals with the computation of the number of working days.

3.4 SUMMARY

- As per the Payment of Bonus (Amendment) Act 2015: Section 12 provides that: Where the salary or wages of an employee exceeds ₹ 7000 per month (or the minimum wage for the scheduled employment as fixed by the appropriate Government, whichever is higher), the bonus payable to such employee under section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wages were ₹ 7000 per month (or the minimum wage for the scheduled employment as fixed by the appropriate Government, whichever is higher).
- Section 13 provides that ‘where an employee has not worked for all the working days in an accounting year, the minimum bonus of ₹ 100 or, as the case may be, of ₹ 60, if such bonus is higher than 8.33 per cent of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced’.

- Section 14 deals with the computation of the number of working days.
- Where the employee enters into an agreement or settlement with his employer for the payment of an annual bonus linked with production or productivity in lieu of bonus based on profits, he shall be entitled to receive bonus due to him under such agreement or settlement, subject to a minimum of 8.33 per cent and a maximum of 20 per cent of the salary or wages earned by him during the relevant accounting year.
- The Payment of Bonus Act principally dealt with profit bonus, hence customary bonus, or bonus as an implied term or condition of service was outside the purview of the Bonus Act. Section 31 A and Section 17 of the Act deals with this provision.

3.5 KEY WORDS

- **Customary bonus**: It refers to a bonus which is being paid by way of tradition or custom at a uniform rate over a number of years and which has no link with profit.
- **Interim bonus:** It refers to the bon**uses** which payable in case a policy matures or death occurs in between the two successive bonus declaration dates

3.6 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. What does Section 17 of the Payment of Bonus Act prescribe?
2. Which type of salary of wages earned by an employee cannot be taken into account for the payment of bonus?
3. When does the provision of Section 31A become null?

Long Answer Questions

1. Describe the calculation of bonus with respect to: (i) certain employees, (ii) proportionate reduction and computation of working days.
2. Discuss the provisions of Section 31 A of the Payment of Bonus Act.

3.7 FURTHER READINGS

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

Kuchhal, M C. 2012. *Business and Industrial Laws, Second Edition*. New Delhi: Vikas Publishing House.

Padhi, P K. 2017. *Labour and Industrial Laws, Third Edition*. New Delhi: PHI Learning.

UNIT 4 PAYMENT OF BONUS ACT: SET ON AND SET OFF

NOTES

Structure

4.0 INTRODUCTION

In the previous units, you learnt the concepts of computation, eligibility, payment, deduction and adjustment of bonus. Under the computation of allocable surplus, the concept of set on and set off was mentioned. Set on refers to provision wherein if the allocable surplus exceeds the amount of maximum bonus payable as prescribed, then, the excess is carried forward for being set on in the succeeding accounting year and so on as mentioned in the Act. Set off refers to the provision wherein if there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment as prescribed, then such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on as mentioned in the Act. In this unit, you will learn what the Act prescribes in this regard.

Further, you will also learn about some important provisions related to recovery, dispute and presumption about accuracy of balance sheet and profit and loss account.

4.1 OBJECTIVES

After going through this unit, you will be able to:

- Explain the provisions of set-on and set-off
- Describe the computation of bonus in case of new establishment
- Discuss the recovery and dispute settlement of bonus
- Recall the presumption about accuracy of accounts

4.2 INTRODUCTION TO SET ON AND SET OFF ALLOCABLE SURPLUS

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As per section 15 of the Payment of Bonus Act:

If in an accounting year, the allocable surplus exceeds the amount of maximum bonus payable, then such excess shall be carried forward for being set on in the succeeding four accounting years, whereafter the amount of set-on remaining unutilized shall lapse. The amount to be carried forward should not exceed 20 per cent of the salary or wages for that accounting year.

If there is no allocable surplus or if the allocable surplus falls short of the minimum bonus payable, then such deficiency is to be met out of the amount brought forward for being set on from the previous accounting year, if any.

If there is still any deficiency, then such amount is to be carried forward for being set off in the succeeding four accounting years, whereafter the amount of set-off remaining unadjusted shall lapse.

While calculating bonus for the succeeding accounting years, the amount of set-on and set-off carried forward from the earliest accounting year shall first be taken into account.

Example— M/s ABC has an allocable surplus of ₹20,000 in 2016. The minimum bonus payable was ₹2,000.

Maximum bonus (@ 20 per cent) was ₹4,800. Bonus paid ₹4,800.

Amount of set-on carried forward to next year = (allocable Surplus-bonus paid), restricted to 20 per cent of salary or wages i.e., ₹4,800.

In 2017, allocable surplus was nil and minimum bonus payable was ₹2,500. Amount of set-on (2016) adjusted and bonus paid = ₹2,500.

Balance amount of set-on (2016) carried forward to 2018 = ₹2,300.

In 2018, the allocable surplus was nil and the minimum bonus payable was ₹2,800. The amount of set-on (2016) adjusted in the next years.

4.2.1 Bonus in Case of New Establishment (Up to Seven Years)

The following are the provisions as mentioned in section 16 of the Payment of Bonus Act.

In the first five accounting years following the year in which the employer begins to sell his goods or render services, bonus is payable only in respect of that accounting year, in which the employer derives 'profits'. Bonus for this year is to be calculated according to the provisions of the Act (as discussed above) excepting the provisions of set-on and set-off.

In the seventh accounting year, set-on or set-off is to be made of the excess or deficiency carried forward from the fifth, sixth and seventh accounting years.

From the eighth accounting year onwards, bonus is to be calculated as in case of any other establishment.

Check Your Progress

1. The amount of set on and set off from which year is taken into account while calculating bonus for succeeding accounting years?
2. Name the Section which deals with bonus in case of new establishment in the Payment of Bonus Act.
3. What is the number of years up till which an establishment is considered new as per the Payment of Bonus Act?

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4.3 RECOVERY AND SETTLEMENT OF DISPUTE

Section 21 of the Payment of Bonus Act says:

Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorized by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate government for the recovery of the money due to him, and if the appropriate government or such authority as the appropriate government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

PROVIDED that every such application shall be made within one year from the date on which the money became due to the employee from the employer:

PROVIDED FURTHER that any such application may be entertained after the expiry of the said period of one year, if the appropriate government is satisfied that the applicant had sufficient cause for not making the application within the said period.

Explanation: In this section and in [23][sections 22, 23, 24 and 25] "employee" includes a person who is entitled to the payment of bonus under this Act but who is no longer in employment.

Reference of disputes under the Act is mentioned under Section 22 which says:

Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), or of any corresponding law relating to investigation and settlement of

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industrial disputes, in force in a State and the provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly.

4.3.1 Presumptions about Accuracy of Balance Sheet and Profit and Loss Account

Section 23 of the Payment of Bonus Act deals with the aforementioned condition. The act says that the authority dealing with investigation and settlement of industrial disputes of the kind referred to in Sec. 22, may presume that the statements and particulars in the Balance Sheet and the Profit and Loss Account of a company or a corporation (other than a Banking Company) are accurate, provided the balance sheet and the profit and loss account of the company are duly audited by the Comptroller and Auditor General of India or by a qualified auditor under the Companies Act 1956.

In such a case, the corporation or the company need not prove their accuracy by filing an affidavit or by any other mode.

The authority who can presume accuracy is any arbitrator or a tribunal under the Industrial Disputes Act, 1947 or under any corresponding law relating to investigation and settlement of industrial dispute in force in a state to which any dispute between an employer and his employees with respect to bonus payable under the Act or with respect to the applicability of the Act to an establishment in the public sector is referred.

Where the authority is satisfied that the statements and particulars contained in the balance sheet and the profit and loss account of the corporation or the companies are not account, it may take necessary steps to find out the accuracy of such statements or particulars.

The authority, on an application made by any trade union being a party to the dispute or where there is no trade union by the employees' party to the dispute, may require any clarification relating to any item in the Balance Sheet or the Profit and Loss Account from the Employer Corporation or company.

If the authority is satisfied that such clarification is necessary, it may, by order direct the employer corporation or company to furnish to the trade union or the employees such classification within such time as may be specified in the direction. The corporation or the company shall comply with the direction.

Check Your Progress

4. When shall an application for recovery be made by an employee as per the Payment of Bonus Act?
5. Who is defined as an employee in Section 22-25 of the Payment of Bonus Act?

4.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

NOTES

1. While calculating bonus for succeeding accounting years, the amount of set on and set off carried forward from the earliest accounting year shall first be taken into account.
2. Section 16 of the Payment of Bonus Act deals with the provisions of the bonus in case of new establishment.
3. As per the Payment of Bonus Act, an establishment is considered new up till seven years.
4. Every application for recovery of bonus under Section 21 shall be made within one year from the date on which the money became due to the employee from the employer.
5. In the sections 22, 23, 24 and 25, "employee" includes a person who is entitled to the payment of bonus under this Act but who is no longer in employment.

4.5 SUMMARY

- Section 15 of the Payment of Bonus Act says that if in an accounting year, the allocable surplus exceeds the amount of maximum bonus payable, then such excess shall be carried forward for being set on in the succeeding four accounting years, whereafter the amount of set-on remaining unutilized shall lapse. The amount to be carried forward should not exceed 20 per cent of the salary or wages for that accounting year.
- Section 15 of the Payment of Bonus Act further says that if there is no allocable surplus or if the allocable surplus falls short of the minimum bonus payable, then such deficiency is to be met out of the amount brought forward for being set on from the previous accounting year, if any. If there is still any deficiency, then such amount is to be carried forward for being set off in the succeeding four accounting years, whereafter the amount of set-off remaining unadjusted shall lapse.
- As per Section 16 of the Payment of Bonus Act, in the first five accounting years following the year in which the employer begins to sell his goods or render services, bonus is payable only in respect of that accounting year, in which the employer derives 'profits'. Bonus for this year is to be calculated according to the provisions of the Act (as discussed above) excepting the provisions of set-on and set-off.
- Section 21 of the Payment of Bonus Act says for recovery of bonus, the described employee shall make application to the appropriate government for the recovery of the money due to him, subject to the approval by the authority.

- Section 22 of the Payment of Bonus Act mentions the provision regarding any dispute which arises between an employer and his employees with respect to the bonus payable under this Act.
- Section 23 of the Payment of Bonus Act deals with the presumptions about accuracy of balance sheet and profit and loss account.

4.6 KEY WORDS

- **Industrial Disputes Act:** Passed in 1947, this is an Act which makes provision for the investigation and settlement of industrial disputes, and for certain other purposes.
- **Arbitrator:** It refers to an independent person or body officially appointed to settle a dispute.

4.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. Give an example of how the calculation of set on and set off is carried out.
2. What does the Payment of Bonus Act say about the ceiling regarding the amount to be carried forward?
3. Write a short note on the provisions of Section 21 of the Payment of Bonus Act.
4. Mention the nature of authority presume accuracy of accounts as per the Payment of Bonus Act.

Long Answer Questions

1. Discuss the provisions of the Payment of Bonus Act in reference to the set on and set off of allocable surplus.
2. Examine the provisions of the Payment of Bonus Act with regards to presumptions about accuracy of Balance Sheet and Profit and Loss Account.

4.8 FURTHER READINGS

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

Kuchhal, M C. 2012. *Business and Industrial Laws, Second Edition*. New Delhi: Vikas Publishing House.

Padhi, P K. 2017. *Labour and Industrial Laws, Third Edition*. New Delhi: PHI Learning.

BLOCK - II
PAYMENT OF GRATUITY AND WAGES ACT

NOTES

UNIT 5 PAYMENT OF GRATUITY

Structure

5.0 INTRODUCTION

In the previous units, you had learnt about various sections of the Payment of Bonus Act. In this unit, you will learn about the Payment of Gratuity Act. Gratuity is a type of retirement benefit. It is mandatory payment made to employees in India for long service within a company. The Payment of Gratuity Act was passed by the Indian Parliament in 21 August 1972. The act came in force on 16 September 1972. The unit will examine the act in detail.

5.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the provisions of the Payment of Gratuity Act, 1972
- Describe the qualifying conditions for the payment of gratuity
- Explain how gratuity is calculated

5.2 THE PAYMENT OF GRATUITY ACT, 1972

The Payment of Gratuity Act, 1972 is a social security measure intended to provide some protection to persons employed in industrial and commercial establishments against the risk of old age. Gratuity is a kind of reward or retirement benefit which an employer pays out of his gratitude to an employee for his long and faithful service at the time of his retirement or termination of service.

The Payment of Gratuity Act, 1972, came into force on 16th September, 1972. It has been amended six times in 1984, 1987, 1994, 1998, 2009 and 2010.

The Act extends to the whole of India. But in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir [Sec. 1(2)].

Applicability of the Act

The Act applies to:

(*a*) every factory, mine, oilfield, plantation, port and railway company;

(*b*) every shop or establishment covered by any law in force in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months; and

(*c*) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months as the Central Government may, by notification specify [Sec.1(3)].

In exercise of the power referred to in clause (*c*) above, the Central Government has made the Act applicable to the following establishments, in which ten or more persons are employed: (*i*) Motor transport undertakings, (*ii*) Clubs, (*iii*) Chambers of Commerce and Industry, (*iv*) Federations of Commerce and Industry, (*v*) Local Bodies, (*vi*) Inland water transport establishments, (*vii*) Educational Institutions, (*viii*) Registered Trusts and Societies, and (*ix*) Solicitors offices. A Municipal Board is an 'establishment' covered by the provisions of this Act [*Nagar Palika, Moradabad* vs. *Appellate Authority, etc., Kanpur,* (1990), 2 LLJ, 156 All.].

A shop or establishment to which the Act has become applicable shall continue to be governed by the Act notwithstanding that the number of persons employed therein at any time after the Act has become so applicable falls below ten [Sec. 1(3-A)].

As per Rule 3 of the Payment of Gratuity (Central) Rules, 1972, the employer is required to submit a notice in the prescribed form containing name and address of the establishment, employer, nature of business, etc., to the Controlling Authority of the Area, within 30 days of opening an establishment to which the Act applies. The employer is also required to intimate the Controlling Authority if there is any change in the aforestated particulars, within 30 days of the change. Again, if there is any proposal to close down the business, the employer is required to inform the Controlling Authority at least 60 days before the intended closure.

Employees Covered by the Act

All persons employed for wages to do any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies (already discussed above), are eligible for payment of gratuity under the Act, provided they have rendered continuous service for five years or more. The Act is, however, not applicable to:

(*a*) apprentices, and

(*b*) persons holding a post under the Central Government or a State Government and are governed by any other Act or rules providing for payment of gratuity [Sec. 2(*e*)].

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Thus, the Payment of Gratuity Act, 1972 provides for a scheme of compulsory payment of gratuity by managements of factories, mines, oilfields, establishments employing 10 or more persons; in the event of superannuation, retirement, resignation and death or disablement due to accident or disease.

All the employees are eligible for payment of gratuity irrespective of their wages/salary. The payment of gratuity is dependent on fulfilment of certain conditions prescribed in the Act. It is to be calculated at the rate of 15 days salary/wages for every completed year of service, subject to a maximum of ₹10 lakhs. The right of a workman to claim gratuity can be forfeited by the employer in case of dismissal for gross misconduct.

Important Definitions

1. **Appropriate Government** [Sec. 2(*a*)]. In relation to any of the following establishments, 'appropriate Government' means the Central Government:
   (*a*) an establishment belonging to, or under the control of, the Central Government,
   (*b*) an establishment having branches in more than one State,
   (*c*) a factory belonging to, or under the control of, the Central Government,
   (*d*) major port, mine, oilfield or railway company.

   In any other case, 'appropriate Government' means the State Government.
2. **Completed year of service** (Sec. 2(*b*)]. It means continuous service of one year.
3. **Continuous service.** According to Section 2-A:
   1. An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee concerned.
   2. Where an employee (not being an employee employed in a seasonal establishment) is not in *continuous service* (as defined above) for any period of one year or six months, he shall be deemed to be in continuous service:

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(*a*) for the period of *one year*, if during the period of twelve months preceding the date with reference to which calculation is to be made, the employee has actually worked under the employer for not less than:

(*i*) 190 days, in the case of an employee employed below the ground in a mine, or in an establishment which works for less than 6 days a week; and

(*ii*) 240 days, in any other case,

(*b*) for the period of *six months*, if during the period of six months preceding the date with reference to which the calculation is to be made, the employee has actually worked under the employer for not less than:

(*i*) 95 days, in the case of an employee employed below the ground in a mine, or in an establishment which works for less than 6 days a week; and

(*ii*) 120 days, in any other case.

For the above purpose, the number of days on which an employee has actually worked under an employer shall include the days on which:

(*i*) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, *or* under the Industrial Disputes Act, 1947, *or* under any other law applicable to the establishment;

(*ii*) he has been on leave with full wages, earned in the previous year;

(*iii*) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(*iv*) in the case of a female, she has been on maternity leave. However, the total period of such maternity leave should not exceed 12 weeks.

7. Where an employee, employed in a seasonal establishment, is not in *continuous service* (as defined above) for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than 75 per cent of the number of days on which the establishment was in operation during such period.

6. **Controlling authority** (Sec. 3). The appropriate Government may, by notification in the Official Gazette, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for

different areas. Thus, both the Central and State Governments are required to appoint their own officers as controlling authorities for administering this Act.

The Central and State Governments have also been empowered to frame suitable rules for carrying out the purposes of this Act, and to appoint inspectors with sufficient powers for enforcement of the Act (Secs. 7A, 7B and 15).

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5. **Employee** [Sec. 2(*e*)]. "Employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express on implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this act applies (already discussed earlier), but does not include any such person who holds a post under the Central Government, or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.
6. **Employer** [Sec. 2(*f*)]. In relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop belonging to or under the control of the Central Government or a State Government, 'employer' means a person or authority appointed by the appropriate Government for the supervision and control of employees. Where no person or authority has been so appointed, 'employer' means the head of the Ministry or the Department concerned.

   In relation to any of the above mentioned establishments belonging to or under the control of any local authority, 'employer' means the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority.

   In any other case, 'employer' means the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person.
7. **Retirement** [Sec. 2(*q*)]. "Retirement" means termination of the service of an employee otherwise than on superannuation. This definition covers the termination of service due to any reason except by superannuation, *e.g.* termination due to closure of unit or retrenchment.
8. **Superannuation** [Sec. 2(*r*)]. "Superannuation", in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment. Literally the term

superannuation means retirement of an employee because of advanced age.

9. **Wages** [Sec. 2(*s*)]. "Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

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'Incentive wages' are included in the definition of 'wages' as contained in Section 2(*s*) of the Act [*Anglo-French Textiles Ltd., Pondicherry* vs. *Presiding Officer, Labour Court,* (1981), Lab. I.C. 202 Mad.].

Payment of Gratuity (Sec. 4)

Qualifying condition for payment of gratuity [Sec. 4(1)]. Every employee covered by the Act is entitled to receive gratuity after he has rendered continuous service for five year or more when his employment is terminated:

(*i*) on his superannuation, *or*

(*ii*) on his retirement or resignation, *or*

(*iii*) on his death or disablement due to accident or disease.

The qualifying condition of minimum five years continuous service is not necessary where the termination of the employment of any employee is due to death or disablement. For this purpose 'disablement' means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

In the case of death of an employee, gratuity payable to him is to be paid to his nominee, and if no nomination has been made, it is payable to his heirs. Where any such nominees or heirs is a minor, the share of such minor is to be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Rate of gratuity [Sec. 4(2)]. Gratuity is payable at the rate of 15 days wages for every completed year of service, or part thereof in excess of six months. In the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, gratuity is to be paid at the rate of 7 days wages for each season. Persons who remained in employment throughout the year in a seasonal establishment (*for example,* employed in the Accounts Department in a permanent capacity in a sugar factory which is a seasonal factory) are entitled to gratuity at the rate of 15 days wages for every completed year of service like workers in non-seasonal establishments.

Computation of gratuity [Sec. 4(2) (4) (5)]. For calculating gratuity, the rates of 15 or 7 days wages are to be based on the rate of wages last drawn by the

employee concerned. In the case of piece-rated employee, daily wages are to be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and for this purpose, the wages paid for any over-time work shall not be taken into account. In the case of a monthly rated employee, 15 days wages are to be calculated by dividing the monthly rate of wages last drawn by him by 26 and multiplying the quotient by 15.

In the form of a formula : $\frac{\text{Monthly rate of wages last drawn}}{26} \times 15$

For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

Nothing in this Act shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

Maximum gratuity [Sec. 4(3)]. The amount of gratuity payable to an employee must not exceed ₹10 lakhs. This monetary ceiling was raised from ₹3,50,000 to ₹10,00,000 by the Payment of Gratuity (Amendment) Act, 2010, with effect from 24th May, 2010.

Forfeiture of Gratuity [Sec. 4(6)]. Gratuity can be forfeited under two situations:

1. The gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.
2. The gratuity payable to an employee may be wholly or partially forfeited if the services of such employee have been terminated :
   (*a*) for his riotous or disorderly conduct or any other act of violence on his part, or
   (*b*) for any act which constitutes an offence involving moral turpitude, if such an offence has been committed by him in the course of his employment.

Any decision to forfeit gratuity can be taken only after affording opportunity of hearing to the employee. The offence of theft involves moral turpitude within the meaning of this sub-section [*Bharath Gold Mines Ltd.* vs. *Regional Labour Commr*., (1987) 1 LLN 308 (Kant) (DB)].

Determination and Payment of Gratuity (Sec. 7)

Application for gratuity. The rules relating to the application for payment of gratuity are as follows:

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(1) The employee who has become eligible for payment of gratuity, or his nominee, as the case may be, should send an application to the employer within 30 days from the date of gratuity becoming payable. However, where the date of superannuation or retirement is known, the employee may apply before 30 days of the date of superannuation or retirement.

(2) In case of death of the employee without making nomination, his legal heir, who is eligible for payment of gratuity, may make an application to the employer for the payment of gratuity within *one* year from the date of gratuity becoming payable.

(3) An application for payment of gratuity filed after the expiry of periods specified above must also be entertained by the employer, if there is sufficient cause for the delay.

Determination of gratuity. As soon as gratuity becomes payable to an employee, his employer has to determine the amount of gratuity, irrespective of the fact whether an application for payment of gratuity has been made or not. He has to give notice in writing to the person to whom the gratuity is payable as well as to the controlling authority of the area specifying the amount of gratuity so determined.

Payment of gratuity. The employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable. If the amount of gratuity payable by the employer is not paid within a period of 30 days, the employer shall pay, for the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate of 10% p.a. (or at such rate as notified by the Government from time to time for repayment of long-term deposits) on the amount of gratuity. No such interest shall, however, be payable if the delay in the payment is due to the default of the employee and the employer has obtained permission from the controlling authority for the delayed payment on this ground.

Disputed claim of gratuity. If there is any dispute :

(*a*) as to the *amount* of gratuity payable to an employee, *or*

(*b*) as to the *admissibility* of any claim of, or in relation to, an employee for payment of gratuity, *or*

(*c*) as to the *person entitled* to receive the gratuity,

the employer must deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity.

Where there is a dispute with regard to any matter or matters specified above, the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute. After making necessary enquiries and giving to the parties reasonable opportunity to be heard in determining the matter or matters in dispute, if the Controlling Authority finds that any amount in excess to the amount deposited by the employer is payable, he will direct the employer to pay such amount.

The Controlling Authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

Appeal. Any person aggrieved by the order of the Controlling Authority can prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government for this purpose, within 60 days of receiving the order. This time limit may be extended by a further period of 60 days for a sufficient cause. But no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the Controlling Authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited, or deposits with the Appellate Authority such amount.

The appropriate Government or the Appellate Authority, as the case may be, after hearing the parties, may confirm, modify or reverse the decision of the Controlling Authority.

Recovery of Gratuity (Sec. 8)

If the amount of gratuity payable is not paid by the employer, within the prescribed time, to the person entitled thereto, the aggrieved person shall make an application to the Controlling Authority. Thereupon the Controlling Authority shall issue a certificate for that amount to the Collector, after giving the employer a reasonable opportunity of showing cause against the issue of such certificate. The Collector shall recover the amount together with compound interest thereon at the rate 15% per annum (or at such rate as notified by the Government from time to time) from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto. But the amount of interest payable must not exceed the amount of gratuity.

Penalties

Section 9 deals with punishments for contravention of the provisions of the Act. It provides as follows:

For false representation. It provides for penalty for knowingly making or causing to be made *any false statement or false representation* for avoiding any payment to be made by himself under this Act or of enabling any other person to avoid such payment. The penalty is imprisonment for a term upto six months, or fine upto ₹10,000, or both.

For contravention of the Act. Sub-section (2) provides for punishment to the employer who *contravenes or makes default in complying with any of the provisions of this Act* or any rule or order made thereunder. The punishment may be in the form of imprisonment for a term which shall not be less than 3 months but which may extend to 1 year, or with fine which shall not be less than ₹10,000 but which may extend to ₹20,000 or with both.

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For non-payment of gratuity. Where the offence relates to non-payment of any gratuity payable, the minimum punishment is imprisonment for a term of 6 months but which may extend to 2 years. But if the Court trying the offence is of the opinion that a lesser term of imprisonment or the imposition of fine would meet the ends of justice, it may reduce the punishment.

Check Your Progress

1. Who appoints the controlling authority responsible for the administration of the gratuity act?
2. What is the rate of gratuity?
3. When is qualifying condition of minimum five years not necessary for payment of gratuity?

5.3 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. According to the Payment of Gratuity Act, the appropriate Government may, by notification in the Official Gazette, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas. Thus, both the Central and State Governments are required to appoint their own officers as controlling authorities for administering this Act.
2. Gratuity is payable at the rate of 15 days wages for every completed year of service, or part thereof in excess of six months. In the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, gratuity is to be paid at the rate of 7 days wages for each season.
3. The qualifying condition of minimum five years continuous service is not necessary where the termination of the employment of any employee is due to death or disablement.

5.4 SUMMARY

- The Payment of Gratuity Act, 1972 is a social security measure intended to provide some protection to persons employed in industrial and commercial establishments against the risk of old age.
- Gratuity is a kind of reward or retirement benefit which an employer pays out of his gratitude to an employee for his long and faithful service at the time of his retirement or termination of service.

- For calculating gratuity, the rates of 15 or 7 days wages are to be based on the rate of wages last drawn by the employee concerned.
- In the case of piece-rated employee, daily wages are to be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and for this purpose, the wages paid for any over-time work shall not be taken into account.
- As soon as gratuity becomes payable to an employee, his employer has to determine the amount of gratuity, irrespective of the fact whether an application for payment of gratuity has been made or not.
- If the amount of gratuity payable is not paid by the employer, within the prescribed time, to the person entitled thereto, the aggrieved person shall make an application to the Controlling Authority.

5.5 KEY WORDS

- **Superannuation:** It means retirement of the employee because of advanced age.
- **Retirement:** It refers to the action or fact of leaving one's job and ceasing to work.
- **Gratuity:** It refers to a sum of money paid to an employee at the end of a period of employment.

5.6 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. What establishments and employees are covered under the Payment of Gratuity Act, 1972?
2. Define the following terms with reference to the Payment of Gratuity Act, 1972:
   (a) Appropriate Government,
   (b) Continuous Service, and
   (c) Employer.
3. State the provisions of the Payment of Gratuity Act, 1972 relating to 'penalties'.

4. State the provisions of the Payment of Gratuity Act in regard to the following:
   (i) When gratuity is payable?
   (ii) To whom it is payable?
   (iii) By whom it is payable?

Long Answer Questions

1. What is the qualifying condition for payment of gratuity? At what rate gratuity is payable? What is the method of computation of gratuity? Can gratuity payable to an employee be forfeited? Discuss.
2. Discuss the provisions of the Payment of Gratuity Act, 1972 regarding determination and payment of gratuity.
3. Explain the provisions of the Payment of Gratuity Act, 1972 relating to 'forfeiture' of the amount of gratuity payable to an employee.

5.7 FURTHER READINGS

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

Kuchhal, M C. 2012. *Business and Industrial Laws, Second Edition*. New Delhi: Vikas Publishing House.

Padhi, P K. 2017. *Labour and Industrial Laws, Third Edition*. New Delhi: PHI Learning.

UNIT 6 PAYMENT OF WAGES

Structure

6.0 INTRODUCTION

In the previous unit, you learnt about the gratuity act. In this unit, we will begin our discussion on the Payment of Wages Act, 1936. The Payment of Wages Act is part of the Indian labour laws that have been enacted for the benefit of employees. According to the Act, employees need to receive wages, on time, without any unauthorised deductions. Section 6 of the Act requires that people are paid in money rather than in kind. The Act also provides the tax withholdings the employer must deduct and pay to the central or state government before distributing the wages.

6.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the applicability of the Payment of Wages Act, 1936
- Explain who is responsible for the payment of wages according to the act

6.2 PAYMENT OF WAGES ACT, 1936

The Payment of Wages Act, 1936 was enacted with a view to ensuring that wages payable to workers covered by the Act were disbursed by the employers regularly within the prescribed time limit, and that no unauthorised deductions were made from wages and also no arbitrary fines being imposed upon workers. The Act came into force on 28th March, 1937. The Act has been amended several times. The major amending Acts have been enacted in the year 1957, 1964, 1976, 1977, 1982 and 2005.

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Applicability of the Act

According to Section 1(4), the Act applies to the payment of wages to persons:

(*i*) employed in a "factory" (defined under the next heading),

(*ii*) employed (otherwise than in a factory) upon any railway by a railway administration either directly or through a sub-contractor, and

(*iii*) employed in an "industrial or other establishment" specified in sub-clauses (a) to (g) of Clause (*ii*) of Section 2 (discussed under the next heading).

However, the appropriate Government may, by giving three months notice extend the provisions of this Act or any of them to any establishment specified under sub-clause (h) of clause (*ii*) of Section 2 (discussed under the next heading). [Sec. 1(5)]

Eligibility [Sec. 1(6)]

The Payment of Wages Act, 1936 applies to every worker, (including those employed through a contractor), who is in receipt of wages up to ₹6,500 per month. [The wage ceiling has been increased from ₹1,600 p.m. to ₹6,500 p.m. by the Payment of Wages (Amendment) Act, 2005, with effect from 9th November, 2005].

Important Definitions

1. **Appropriate Government** [Sec. 2(*i*)]. "Appropriate Government" means, in relation to railways, air transport services, mines and oilfields, the Central Government and, in relation to all other cases, the State Government.
2. **Employed Person** [Sec. 2(*i*a)]. "Employed person" includes the legal representative of deceased employed person.
3. **Employer** [Sec. 2(*i* b)]. "Employer" includes the legal representative of a deceased employer.
4. **Factory** [Sec. 2(*i* c)]. The term "factory" has the same meaning as defined in the Factories Act, 1948. According to Section 2(*m*) of the Factories Act, the term "factory" means any premises including the precincts thereof:

   (*a*) Whereon 10 or more persons are employed or were employed on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, *or*

   (*b*) Whereon 20 or more persons are employed or were employed on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power.

   However, the term "factory" does not include :

   (*i*) a mine subject to the operation of Mines Act, 1952, *or*

   (*ii*) a mobile unit belonging to the armed forces of the Union, *or*

   (*iii*) railway running shed, *or*

   (*iv*) a hotel, restaurant or eating place.

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5. **Industrial or Other Establishment.** According to Section 2(*ii*), " industrial or other establishment" means any:
   (*a*) Tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward.
   (*aa*) Air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India.
   (*b*) Dock, wharf or jetty.
   (*c*) Inland vessel, mechanically propelled.
   (*d*) Mine, quarry or oilfield.
   (*e*) Plantation.
   (*f*) Workshops or other establishments, in which articles are produced, adapted or manufactured, with a view to their use, transport or sale.
   (*g*) Establishments in which any work relating to construction, development or maintenance of buildings, roads, bridges or canals; or relating to operations connected with navigation, irrigation or the supply of water; or relating to generation, transmission and distribution of electricity or any other form of power is being carried on.
   (*h*) Any other establishment or class of establishment which the Central Government or State Government may specify, by notification in the Official Gazette.
6. **Wages.** According to Section 2 (*vi*), "wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment.

Wages also includes:

(*a*) any remuneration payable under any award or settlement between the parties or order of a court;

(*b*) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(*c*) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(*d*) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(*e*) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

Wages does not include:

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(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;

(2) the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (*d*) above.

Responsibility for Payment of Wages (Sec.3)

1. Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him.

   In addition, the following persons shall also be responsible for payment of wages in case of persons employed:

   (*a*) in factories, if a person has been named as the manager of the factory.

   (*b*) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;

   (*c*) upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned;

   (*d*) in the case of contractor, a person designated by such contractor who is directly under his charge; and

   (*e*) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act.

   The person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

2. Notwithstanding anything contained in sub-section (1), it shall be the responsibility of the employer to make payment of all wages required to be

made under this Act in case the contractor or the person designated by the employer fails to make such payment.

Check Your Progress

1. When did the Payment of Wages Act, 1936, come into force?
2. Who does the Payment of Wages Act, 1936 apply to?

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6.3 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The Payment of Wages Act, 1936 came into force on 28th March, 1937.
2. The Payment of Wages Act, 1936 applies to every worker, (including those employed through a contractor), who is in receipt of wages up to ₹6,500 per month.

6.4 SUMMARY

- The Payment of Wages Act, 1936 was enacted with a view to ensuring that wages payable to workers covered by the act were disbursed by the employers regularly within the prescribed time limit, and that no unauthorised deductions were made from wages and also no arbitrary fines being imposed upon workers.
- The act has been amended several times. The major amending acts have been enacted in the year 1957, 1964, 1976, 1977, 1982 and 2005.
- According to section 2 (vi), "wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment.
- According to the act, wages does not include any bonus, which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court.

6.5 KEY WORDS

- **Wages:** It means a fixed regular payment earned for work or services, typically paid on a daily or weekly basis.
- **Remuneration:** It means money paid for work or a service.

- **Bonus:** It means a sum of money added to a person's wages as a reward for good performance.

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6.6 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Discuss the applicability of the Payment of Wages Act.
2. What does industrial or other establishment mean according to the act?

Long-Answer Questions

1. Discuss what wages are included and does not included according to the Payment of Wages Act.
2. Who is responsible for the payment of wages? Discuss with reference to the appropriate sections of the Payment of Wages Act.

6.7 FURTHER READINGS

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

Kuchhal, M C. 2012. *Business and Industrial Laws, Second Edition*. New Delhi: Vikas Publishing House.

Padhi, P K. 2017. *Labour and Industrial Laws, Third Edition*. New Delhi: PHI Learning.

UNIT 7 FIXATION OF WAGE PERIODS

Structure

7.0 INTRODUCTION

In the previous unit, you were introduced to the preliminary sections of the Payment of Wages Act, 1936. In this unit, the discussion will turn towards the provisions of the Payment of Wages Act related to wage period, time of payment and deduction and fines. The Unit will discuss these sections in detail.

7.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the fixation of wage periods according to the Payment of Wages Act
- Examine the deductions and fines that can be made to the wages according to the Payment of Wages Act

7.2 WAGE PERIOD AND TIME OF PAYMENT

Fixation of Wage Periods (Sec. 4)

According to Section 4 of the Payment of Wages Act, 1936, every person responsible for the payment of wages shall fix periods (wage period) in respect of which such wages shall be payable, but in any case this wage period shall not exceed one month. In other words, payment of wages can be made daily, weekly, fortnightly or monthly.

Time of Payment of Wages (Sec. 5)

Following are the important rules with regard to the time of payment of wages:

1. In all those establishments and undertakings, which employ less than 1000 persons, wages shall be paid before the expiry of the seventh day and in all

other establishments, which employ more than 1000 persons, wages shall be paid before the expiry of the tenth day, after the last day of the wage period in respect of which the wages are payable.

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2. In those cases where the employer terminates the employment of any person, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.
3. The appropriate Government may, by general or special order, *exempt* the person responsible for the payment of wages to persons employed in any railway (otherwise than in a factory) or employed as daily rated workers in the Public Works Department of the Central Government or the State Government, from the operation of this section.
4. All payments of wages shall be made on a working day.

Medium of Payment (Sec. 6)

All wages shall be paid in current coin or currency notes or in both. However, the employer may, after obtaining the written authorisation of the employed person pay him the wages either by cheque or by crediting the wages in his bank account.

7.2.1 Deductions and Fines

Deductions from wages are the most important aspect of wages. Hence, it is discussed in detail in the Act.

Section 7 (1) provides that an employer cannot make any deductions out of the wages payable to an employee except when they are made in accordance with the provisions of the Act.

Explanation I to Section 7(1) provides that every payment made by the employed person to the employer shall be deemed to be a deduction from wages.

Explanation II to Section 7(1) provides that any loss of wages resulting from the imposition (for good and sufficient cause) upon a person employed of any of the following penalties shall not be deemed to be a deduction from wages:

(*i*) withholding of increment or promotion (including the stoppage of increment at an efficiency bar); *or*

(*ii*) reduction to a lower post or time scale or to a lower stage in a time scale; *or*

(*iii*) suspension.

Authorised Deductions

Section 7 (2) provides that the deductions from the wages of an employed person shall be made only in accordance with the provisions of the Act and may be of the following kinds only, namely:

1. Fines
2. Deductions for absence from duty.

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3. Deductions for damage to or loss of goods expressly entrusted to the employee for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default.
4. Deductions for house accommodation supplied by the employer or by Government or any housing board or any other authority.
5. Deductions for such amenities and services supplied by the employer as the State Government may, by general or special order, authorise but shall not include the supply of tools and raw materials required for the purpose of employment.
6. Deductions for recovery of advances or for adjustment of over payment of wages.
7. Deductions for recovery of loans including loans granted for house building purpose and the interest due in respect thereof.
8. Deductions for income-tax payable by the employee.
9. Deductions required to be made by order of a Court, or any other competent authority.
10. Deductions for subscriptions to, and for repayment of advance from any provident fund.
11. Deductions for payments to co-operative societies approved by the appropriate Government, or to a scheme of insurance maintained by the Indian Post Office.
12. Deductions for punishment imposed under service rules.
13. Deductions made with the written authorisation of the person employed:
    (*i*) for payment of any premium on his life insurance policy;
    (*ii*) for the purchase of securities of the Government of India or of any State Government;
    (*iii*) for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of the Government;
    (*iv*) for the payment of his contribution to any fund constituted by the employer or by a trade union registered under the Trade Unions Act, 1926, for the welfare of the employed persons or the members of their families, or both;
    (*v*) for payment of the fees payable by the employee for the membership of any trade union registered under the Trade Unions Act, 1926.
14. Deductions for payment of insurance premium on Fidelity Guarantee Bonds.
15. Deductions for recovery of losses sustained by a railway administration on account of (*i*) acceptance by an employee of counterfeit or base coins or mutilated or forged currency notes; (*ii*) failure of employee to invoice, bill,

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collect or account for appropriate charges due to that administration whether in respect of fares, freight, demurrage or in respect of sale of food in catering establishments; (*iii*) any rebates or refunds incorrectly granted by the employee where such loss is directly attributable to his neglect or default.

16. Deductions made with the written authorisation of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may by notification in the Official Gazette specify.
17. Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

As per Section 7(3), the total amount of deductions in any wage period from the wages of an employed person shall not exceed:

(*i*) in case where such deductions are wholly or partly made for payment to co-operative societies under aforestated clause 11, 75% of such wages; and

(*ii*) in any other case 50% of such wages.

Conditions as to when and how the following types of deductions can be made:

1. **Deductions for Fines** (Sec. 8)

(1) Employer cannot impose any fine on any employee except for acts or omissions committed by him and which the employer must have specified in notices approved by the appropriate Government or by any other prescribed authority.

(2) A notice specifying such acts or omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway at the prescribed places.

(3) No fine can be imposed on an employee until he has been given an opportunity of showing cause against the fine, or otherwise, than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fines which may be imposed in any one wage period on any employee shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage period.

(5) No fine can be imposed on any employed person who is under the age of 15 years.

(6) Any fine imposed on any employee cannot be recovered from him by instalments or after the expiry of ninety[1] days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof must be recorded in a register to be kept by the person responsible for the payment of wages in such form as may be prescribed. Fines collected must be credited to a Fines Fund.

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(9) All realisations from fines can be applied only to such purposes beneficial to the employees of the undertaking as are approved by the prescribed authority.

2. **Deductions for Absence from Duty** (Sec. 9)

(*a*) Deductions from wages can be made when the employee remains absent from the place where, by the terms of his employment, he is required to work. Absence may be either for the whole or any part of the period during which he is so required to work.

(*b*) An employee shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in-strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

(*c*) Amount of such deduction shall in no case bear to the wages payable to the employed person in respect of wage period for which the deduction is made a larger proportion than the period, for which he was absent, bears to the total period, within such wage period, during which by the terms of his employment he was required to work, *i.e.*, deductions for absence from duty cannot exceed the sum which the person would have been entitled to, if he had worked the same number of days for which the deduction is made.

(*d*) Subject to any rules made in this behalf by the appropriate Government, if ten or more employees acting in concert absent themselves without due notice as required under the terms of their contract of employment and without reasonable cause, such deduction from wages of any such employee may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of notice.

3. **Deductions for Damage or Loss** (Sec. 10)

(*a*) Deductions for damage or loss shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employee. Damage or loss cannot be deducted from the wages of the worker unless (*i*) it has been caused to those goods which were expressly entrusted to the worker for custody and (*ii*) the damage or loss is directly attributable to his neglect or default.

(*b*) Such deductions shall not be made until the employee has been given an opportunity of showing cause against the deduction. Moreover, it shall be made only in accordance with procedure as may be prescribed for the making of such deductions.

(*c*) Particulars of all such deductions and realisations shall be recorded in a register kept by the person responsible for the payment of wages, in such form as may be prescribed.

4. **Deductions for House Accommodation, Amenities and Services** (Sec.11)

(*a*) Any deductions on this account cannot be made from the wages of an employee unless the house accommodation, amenity or service has been accepted by the worker as a term of employment or otherwise.

(*b*) Such deductions cannot exceed an amount equivalent to the value of the house accommodation, amenity or service supplied.

(*c*) The deductions shall be subject to such conditions as the appropriate Government may impose.

5. **Deductions for Recovery of Advances or for Adjustment of Over-Payments of Wages** (Sec. 12)
    1. Recovery of an advance of money, given before employment began, can be made only from the first payment of wages in respect of a complete wage period, but no recovery shall be made of such advance if given to meet out the travelling expenses.
    2. Recovery of advances of wages not already earned shall be subject to any rules made by the appropriate Government regulating the extent to which such advances may be given and the instalments in which they may be recovered.
    3. Full particulars of amounts of all advances sanctioned and the payments already collected shall be entered in a prescribed register.
6. **Deductions for recovery of loans for house building** (Sec. 12A) **and for payments to cooperative societies or for payment of life insurance premium or for depositing in any savings scheme of Post Office** (Sec. 13). These deductions shall be made subject to the rules made or conditions imposed by the appropriate Government.

Claims Arising out of Wrongful Deductions or Delay in Payment of Wages

Section 15 provides the following rules in this regard :

(*i*) Where any wrongful deductions have been made from the wages of a worker or any payment of wages to a worker has been delayed, such person himself, or any legal practitioner or an officer of a registered trade union duly authorised by the worker to act on his behalf or Inspector of Factories, may, within 12 months of the date of deduction or the date on which the payment of wages was due, apply to the prescribed authority for a direction.

(*ii*) The appropriate Government shall appoint any of the specified persons as authority to hear and decide such applications for refund of deductions wrongly made out of wages of a worker, or payment of delayed wages.

(*iii*) The prescribed authority will give an opportunity to both the parties to explain their positions and if the claim for refund of wrongful deduction or payment of delayed wages is proved, it shall direct the employer to pay to the worker the amount of wrongful deduction plus compensation upto ten times the amount so withheld or an amount ranging from ₹1,500 to ₹3,000 per worker as compensation where payment of wages was wrongfully delayed.

(*iv*) Any claim so filed shall be disposed of within a period of 3 months from the date of registration of the claim by the authority.

Check Your Progress

1. What does Section 6 of the Payment of Wages Act have to say about the medium of payment?
2. List two types of authorised deductions from wages according to the Payment of Wages Act.

7.3 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. According to Section 6 of the Payment of Wages Act, all wages shall be paid in current coin or currency notes or in both. However, the employer may, after obtaining the written authorisation of the employed person pay him the wages either by cheque or by crediting the wages in his bank account.
2. Two authorised deductions from wages according to Section 7(2) of the Payment of Wages Act, are as follows:
    - Fines
    - Deductions for absence from duty

7.4 SUMMARY

- According to the Payment of Wages Act, every person responsible for the payment of wages shall fix periods (wage period) in respect of which such wages shall be payable, but in any case this wage period shall not exceed one month. In other words, payment of wages can be made daily, weekly, fortnightly or monthly.
- Section 7 (1) provides that an employer cannot make any deductions out of the wages payable to an employee except when they are made in accordance with the provisions of the Act.
- Employer cannot impose any fine on any employee except for acts or omissions committed by him and which the employer must have specified in notices approved by the appropriate Government or by any other prescribed authority.

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- The total amount of fines which may be imposed in any one wage period on any employee shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage period.
- Deductions from wages can be made when the employee remains absent from the place where, by the terms of his employment, he is required to work. Absence may be either for the whole or any part of the period during which he is so required to work.

7.5 KEY WORDS

- **Fines:** It means a sum of money exacted as a penalty by a court of law or other authority.
- **Wage Period:** It means the period in respect of which wages are payable to an employee for work done or to be done under his/her contract of employment.

7.6 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. State the permissible deductions that can be made from the wages of the employee under the provisions of the payment of wages Act, 1936.
2. State the provisions of the payment of wages Act, 1936 regarding deduction from wages for absence from duty.

Long-Answer Questions

1. Discuss the provisions of the payment of Wages Act, 1936 relating to imposition of fines.
2. What are the provisions relating to deductions for damage or loss under the Payment of Wages Act, 1936? Discuss.

7.7 FURTHER READINGS

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

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UNIT 8 MAINTENANCE OF RECORDS AND APPOINTMENT OF AUTHORITIES

Structure

8.0 INTRODUCTION

In the previous two units we have discussed the provisions of the Payment of Wages Act, 1936 in relation to responsibility of payment of wages, applicability, fixation of wage periods and deductions and fines. In this unit, we will conclude our discussion on the Payment of Wages Act by examining provisions related to maintenance of records and registers, appointment of authorities as well as the adjudication of claims.

8.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the appointment of authority under the Payment of Wages Act, 1936
- Examine claims are adjudicated under the Payment of Wages Act, 1936

8.2 MAINTENANCE OF RECORDS

According to Section 13(A) of the Payment of Wages Act, 1936,

1. Every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts

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given by them and such other particulars and in such form as may be prescribed.

2. Every register and record required to be maintained under this section shall, for the purposes of this Act, be preserved for a period of three years after the date of the last entry made therein.

14. Appointment of Inspectors

1. An Inspector of Factories appointed under sub-section (1) of section 8 of the Factories Act, 1948 (63 of 1948), shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.
2. The State Government may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.
3. The State Government may, by notification in the Official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial or other establishments in respect of which they shall exercise their functions.
4. An Inspector may, (a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or rules made thereunder are being observed; (b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises of any railway, factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of this Act; (c) supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment; (d) require by a written order the production at such place, as may be prescribed, of any register or record maintained in pursuance of this Act and take on the spot or otherwise statements of any persons which he may consider necessary for carrying out the purposes of this Act; (e) seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer; (f) exercise such other powers as may be prescribed: Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

4A. The provisions of the code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to any search or seizure under this sub-section as the apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

5. Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

14A. Facilities to be afforded to Inspectors

Every employer shall afford an Inspector all reasonable facilities for making any entry, inspection, supervision, examination or inquiry under this Act.

8.3 AUTHORITIES AND ADJUDICATION OF CLAIMS UNDER THE PAYMENT OF WAGES ACT

Section 15 empowers the state governments to appoint an authority by the issue of notification for a specified area to hear and decide and dispose of all claims arising out of deductions from wages or delay in payment of wages of persons employed or paid in the area, including all matters incidental to such claims.

(i) **Who may be appointed.** Any of the following persons may be appointed as an authority for the above purposes:

  (a) Presiding officers of a Labour Court or Industrial Tribunal constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State

  (b) Any Commissioner for Workmen's compensation

  (c) Other officer with experience as a judge in a civil court or as a Stipendiary Magistrate

(ii) **Who may file the application.** If the payment of wages is delayed beyond the due date or deductions are made from wages contrary to the provisions of the Act, an application for recovering the same can be filed either by an employee himself or a legal practitioner or an official of a registered trade union duly authorized in writing by the employee, the inspector or by any other person with the permission of the authority hearing the claim. If there are several employees borne on the same establishment and if their wages for the same period have remained unpaid after the due date, a single claims application can be filed on behalf of all such employees.

Similarly, if several applications are filed by employees belonging to the same unpaid group, the authority can deal with them as if it was a single application by an unpaid group.

Limitation

Every such application has to be presented within one year from the date on which the payment of wages was due or from the date on which deductions from wages were made. The authority has, however, been given the power to condone the delay in filing such application on its being satisfied that there was a 'sufficient cause' for not filing the application within the time prescribed.

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15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.-

1. The State Government may, by notification in the Official Gazette, appoint a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims:

   Provided that where the State Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

2. Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):

   Provided that every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be: Provided further that any application may be admitted after the said period of 1*[twelve months] when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

3. When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding twenty-five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of

such compensation, as the authority may think fit, not exceeding twenty-five rupees:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person, or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the employed person to apply for or accept payment.

Let us consider an example of the decision arrived at with regard to the Payment of Wages Act, 1936, Sections 1(6), 2(i) and 15. In *Damodaran P. and others* v. *M.K. Krishna Kutty,* [(2006) 3 LLJ 407], an employee whose salary was ` 850 per month, filed a claim petition under Section 15 of the Payment of Wages Act, 1936, claiming arrears of wages. The employer resisted the claim, contending that the employee was employed in a managerial capacity and hence he was not entitled to any claim under the Payment of Wages Act and the Authority under the Act had no jurisdiction to deal with the claim. Finally, the matter reached the Kerala High Court. The High Court held that the employee was entitled to make a claim under the said Act, for the following reasons:

(a) Section 2 (s) of the Industrial Disputes Act, 1947, while defining 'workman', specifically excluded persons employed mainly in a managerial or administrative capacity and persons employed in supervisory capacity drawing more than ₹ 1,600/- per month. Unlike the provisions under the Industrial Disputes Act, there is no exclusion or exemption for persons employed in a managerial capacity or administrative capacity under the Payment of Wages Act.

(b) The only condition is that the person who is filing the petition should be employed during the relevant time. Section 1 (6) of the Act makes it clear that the Act is applicable to all employed persons whose salary is less than ₹ 1,600/- per month.

(c) The definition of 'workman' under the Industrial Disputes Act, 1947 cannot be adopted for the term 'employed person' used in the Payment of Wages Act, 1936. The petitioner admittedly was employed in the establishment during the period for which claim for arrears of wages was made and his salary was below ₹ 1,600/- per month.

(d) In view of the above admitted facts, the petitioner is entitled to claim under the Payment of Wages Act and his claim cannot be rejected on the ground that he was employed in a managerial capacity.

NOTES

Check Your Progress

1. Who can appoint inspectors in railways for the purpose of the Payment of Wages Act, 1936?
2. What does Section 15 of the Payment of Wages Act, 1936, empower the state government to do?

8.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The State Government may appoint Inspectors for the purposes of the Payment of Wages Act, 1936, in respect of all persons employed upon a railway to whom the act applies.
2. Section 15 empowers the state governments to appoint an authority by the issue of notification for a specified area to hear and decide and dispose of all claims arising out of deductions from wages or delay in payment of wages of persons employed or paid in the area, including all matters incidental to such claims.

8.5 SUMMARY

- According to Section 13A of the Payment of Wages Act, every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.
- An Inspector of Factories appointed under sub-section (1) of section 8 of the Factories Act, 1948 (63 of 1948), shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.
- Section 15 empowers the state governments to appoint an authority by the issue of notification for a specified area to hear and decide and dispose of all claims arising out of deductions from wages or delay in payment of wages of persons employed or paid in the area, including all matters incidental to such claims.
- The definition of 'workman' under the Industrial Disputes Act, 1947 cannot be adopted for the term 'employed person' used in the Payment of Wages Act, 1936.

8.6 KEY WORDS

- **Bona Fide:** It is a Latin term used to mean genuine, real or good faith.
- **Adjudication:** It refers to the act of judging a case, competition, or argument, or of making a formal decision about something.

8.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Question

1. Write a short-note on the maintenance of records and registers according to the Payment of Wages Act, 1936.

Long Answer Question

1. Examine how claims are adjudicated under the Payment of Wages Act, 1936.

8.8 FURTHER READINGS

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

Kuchhal, M C. 2012. *Business and Industrial Laws, Second Edition*. New Delhi: Vikas Publishing House.

Padhi, P K. 2017. *Labour and Industrial Laws, Third Edition*. New Delhi: PHI Learning.

BLOCK - III

MINIMUM WAGE ACT AND FEATURES

NOTES

UNIT 9 MINIMUM WAGES ACT: FIXATION OF RATE

Structure

9.0 INTRODUCTION

The government as a part of its duty for the welfare of the labourers need to ensure that there is a certain ceiling for minimum payment or wages for the services they deliver. This rate of minimum payment for the workers to survive and ensure basic standard of living is mentioned in the constitution as the 'living wage'. But the interest of the workers is not supreme in the working scenario and the industries' capacity to pay a minimum to the workers also need to be kept in mind. This is defined as the 'fair wage'. Minimum wage is considered to be the amalgamation of the living and fair wage.

A Tripartite Commission of Fair Wage was constituted to recommend on achieving the balance of basic level of subsistence on the worker's level and the minimum level of efficiency for the industry. In 1948, the Minimum Wages Act was passed. This is a statutory but legally non-binding Act. This Act has 31 sections and 2 schedules. In this unit, you will be introduced to the objects and applicability of the Act as well as the fundamentals of the procedure for fixation of minimum wage rate.

9.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the objects and applicability of the Minimum Wages Act
- Explain the procedure for fixation of minimum wage rate

9.2 OBJECTS AND APPLICABILITY

NOTES

In this section, you will learn about the objects and applicability of the Act.

Objects of the Act

The preamble of the Act denotes the objects for regulating minimum wage in the Schedule employments. The primary objects of minimum wage regulation are:

1. Prevention of sweating or payment of unduly low wages to unorganized workers.
2. Maintenance of industrial peace.
3. Elimination of unfair competition between the employers.
4. When there is no strong workers organization, State regulation is necessary to protect workers from exploitation.
5. Regulation of minimum wage will tend to increase the efficiency of workers.
6. Minimum wage regulations compels the employer to reorganize his business and eliminate waste.

Explaining the object of the Minimum Wages Act, the Supreme Court in M/s *Bhikusa Yamasa Kshtriya* v. *Sangamma Akola Taluka Bidi Kamgar Union* observed:

> The object of the Act is to prevent exploitation of the workers, and for that purpose it aims at fixation of minimum wages which the employer must pay. The legislature undoubtedly intended to apply the Act to those industries or localities in which by reason of causes such as unorganized labour or absence of machinery for regulation of wages, the wages paid to workers were, in the light of the general level wages, and subsistence level, inadequate".

Similarly, in *U. Unichay* v *State of Kerala*, the Supreme Court observed that 'What the Act purports to achieve is to prevent the exploitation of labour. For that purpose the Act authorises the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries.

Applicability of the Act

The Minimum Wages Act, 1948, applies to employment that kind of which is enumerated in the schedule of the Act and in certain cases may extend to other employment added by the appropriate Government.

As per Section 2(b), 'appropriate Government' means,— (i) in relation to any scheduled employment carried on by or under the authority of the Central Government, by a railway administration, or in relation to a mine, oilfield or major port, or any corporation established by an Act of the Central Legislature, and (ii) in relation to any other scheduled employment, the State Government.

'**Scheduled Employment**' means an employment specified in the Schedule or any process or branch of work forming part of such employment.'

The Schedule is divided into two parts namely, Part I and II. When originally enacted, Part I of the Schedule had 12 entries. Part II relates to employment in agriculture.

NOTES

PART I

(1) Employment in any woolen carpet making or shawl weaving establishment.

(2) Employment in any rice mill flour mill or dal mill.

(3) Employment in any tobacco (including bidi making) manufactory.

(4) Employment in any plantation that is to say any estate which is maintained for the purpose of growing cinchona rubber tea or coffee.

(5) Employment in any oil mill.

(6) Employment under any local authority.

(7) Employment on the construction or maintenance of roads or in building operations.

(8) Employment in stone breaking or stone crushing.

(9) Employment in any lac manufactory.

(10) Employment in any mica works.

(11) Employment in public motor transport.

(12) Employment in tanneries and leather manufactory.

Employment in gypsum mines.

Employment in barytes mines.

Employment in bauxite mines.

Employment in manganese mines.

Employment in the maintenance of buildings and employment in the construction and maintenance of runways.

Employment in china clay mines.

Employment in kyantite mines.

Employment in copper mines.

Employment in clay mines covered under the Mines Act, 1952 (35 of 1952).

Employment in magnesite mines covered under the Mines Act, 1952 (35 of 1952).

Employment in white clay mines.

Employment in stone mines.

PART II

Employment in agriculture that is to say in any form of farming including the cultivation and tillage of the soil dairy farming the production cultivation growing and harvesting of any agricultural or horticultural commodity the raising of live-stock bees or poultry and any practice performed by a farmer or on a farm as incidental to or in conjunction with farm operation (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation to market of farm produce).

Fig. 9.1 *Part I and Part II of Schedule, Minimum Wages Act (as originally mentioned)*

It was realized that it would be necessary to fix minimum wages in many more kinds of employment to be identified in course of time. Accordingly, powers were given to the appropriate government to add more kinds of employments to the schedule by following the procedure laid down in Section 27 of the Act. As a result, the state governments and the central Government have made several additions to the schedule and it differs from state to state.

9.3 PROCEDURE FOR FIXING RATE OF WAGE

Section 3 of the Act empowers the appropriate government to fix the minimum rates of wages payable to the employees of scheduled employment specified in Part I and Part II of the Schedule or shall review such wages at such intervals it may think fit, not exceeding five years.

By Section 3, an obligation has cast on the appropriate government to fix the minimum wage for employees employed in the scheduled employments or in any new employment added to the schedule under Section 27. Section 3(1) (a) conferes authority on the appropriate government to fix minimum rates of wages after complying with the procedure laid down in the Act and the rules made thereunder.

Under the proviso to Sub-section 3(1) of Section 3, the appropriate government may fix the minimum rates of wages for:

1. A part of the state instead of the whole state
2. Any specified class or classes of employment in the whole of the state
3. Any specified class or classes of employment for a part of the state
4. A type of employment under any specified local authority
5. A type of employment under any class of local authority.

In the case of employment specified in Part II of the schedule, the minimum rates of wages need not be fixed for the entire state. A part of the state may be left out altogether. In the case of employment in Part I, the minimum rates of wages must be fixed for the entire state, no part of the state being omitted.

Different rates of wages:

Section 3(3) empowers the appropriate government to fix or revise minimum rates of wages for:

1. Different scheduled employment
2. Different classes of work in the same scheduled employment
3. Adults, adolescents, children and apprentices
4. Different localities.

Review of the Wages Already Fixed

Section 3(1) (b) provides for a review and revision of the minimum wages already fixed within a period of five years of the earlier fixation. There is no limitation indicated upon the power of the state government to issue any notification when it is reviewing and revising the minimum rates of wages, and the state government has the power to apply the revised rate of wages only to parts of the state. A notification fixing minimum wages must clearly state whether it is being done for the first time or is a revision. But where the appropriate government due to any reason has not revised the minimum wages fixed by it within the period of five years, it is authorized to do so even after the expiry of five years, and until the wages are revised, the minimum rates of wages already fixed will continue to be in force.

The appropriate government is authorized to fix or revise different minimum rates of wages for different scheduled employments or different classes of work in the same scheduled employment or for different localities and for adults, adolescents, children and apprentices. The reason for such fixation or revision of wages is that the condition of employment even in the same industry would be found to be different in different areas. Further, the employers in the various areas would have varying capacity to pay wages to their employees, the profits earned would be unequal in different areas, and certain conditions may be peculiar to some industry in a particular area.

Fixation of wage period

The minimum rates of wages may be fixed in accordance with the wage period that is, by the hours or by the day or by the month or by any other larger period.

Minumum Rate of Wages

Section 4 of the Minimum Wages Act deals with the provisions of constituents of minimum rate of wages. It prescribes the following provisions:

(1) Any minimum rate of wages fixed or revised by the appropriate government in respect of scheduled employments under section 3 may consist of –

(i) a basic rate of wages and a special allowance at a rate to be adjusted at such intervals and in such manner as the appropriate government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or

(ii) a basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of suppliers of essential commodities at concession rates where so authorized; or

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(iii) an all-inclusive rate allowing for the basic rate the cost of living allowance and the cash value of the concessions if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplied of essential commodities at concession rate shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate government.

Procedure for Fixing and Revision of Minimum Wages

Section 5 of the Act provides the procedure for fixing and revising minimum wage. Two methods are enumerated in the Section itself. It is at the discretion of the State to adopt any one.

1. The appropriate government shall appoint as many committees or sub-committees as it considers necessary to hold enquiries and advise it in respect of the fixation or revision of minimum rates of wages.
2. The appropriate government shall by notification in the official Gazette publish its proposal for the information of interested and affected parties and specify a day not less than two months from the date of notification on which the proposals will be taken into consideration. After receiving objections from the parties, the Government may consider and fix or revise minimum rates of wages with a fresh notification to be published in Official Gazette.

The appropriate government after considering the advice of the committee appointed for the purpose and all representations received may by notification fix or revise the minimum rates of wage in respect of each scheduled employment which shall come into force after expiry of three months unless otherwise provided in the notification. Thus for fixing or revising minimum rates of wages, the appropriate Government may constitute the committees or sub-committees.

It is crucial to note here that there were provisions related to Advisory committees and advisory sub-committees earlier which were repealed by the Minimum Wages (Amendment) Act, 1957.

Check Your Progress

1. Which part of the Schedule of the Minimum Wages Act relates to employment in agriculture?
2. What is the number of years the Minimum Wages Act recommends for reviewing the minimum rates of wages?
3. Mention the types of wages for which rates can be fixed or revised as per Section 3(3).

9.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

NOTES

1. Part II of the Schedule of the Minimum Wages Act relates to employment in agriculture.
2. Section 3 of the Minimum Wages Act empowers the appropriate government to review the minimum rates of wages payable to employees of the specified scheduled employment at such intervals it may think fit, not exceeding five years.
3. Section 3(3) empowers the appropriate government to fix or revise minimum rates of wages for:
   - Different scheduled employment
   - Different classes of work in the same scheduled employment
   - Adults, adolescents, children and apprentices
   - Different localities.

9.5 SUMMARY

- The preamble of the minimum wages Act, 1948 Act denotes the objects for regulating minimum wage in the Schedule employments. The primary objects of minimum wage regulation are: prevention of sweating or payment of unduly low wages, maintenance of industrial peace, elimination of unfair competition, protecting unorganized workers from exploitation, regulating wages to improve efficiency and eliminate waste.
- The Minimum Wages Act, 1948, applies to employment that kind of which is enumerated in the schedule of the Act and in certain cases may extend to other employment added by the appropriate Government.
- The Schedule is divided into two parts namely, Part I and II. When originally enacted, Part I of the Schedule had 12 entries. Part II relates to employment in agriculture.
- Section 3 of the Act empowers the appropriate government to fix the minimum rates of wages payable to the employees of scheduled employment specified in Part I and Part II of the Schedule or shall review such wages at such intervals it may think fit, not exceeding five years.
- Section 4 of the Minimum Wages Act deals with the provisions of constituents of minimum rate of wages.
- Section 5 of the Act provides the procedure for fixing and revising minimum wage. Two methods are enumerated in the Section itself. It is crucial to note here that there were provisions related to Advisory committees and

advisory sub-committees earlier which were repealed by the Minimum Wages (Amendment) Act 1957.

9.6 KEY WORDS

NOTES

- **Wages:** As per the Minimum Wages Act, it means all remuneration capable of being expressed in terms of money which would if the terms of the contract of employment express or implied were fulfilled be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include items specified in the Act.
- **Appropriate Government:** As per the Minimum Wages Act, it means,—(i) in relation to any scheduled employment carried on by or under the authority of the Central Government, by a railway administration, or in relation to a mine, oilfield or major port, or any corporation established by an Act of the Central Legislature, and (ii) in relation to any other scheduled employment, the State Government.
- **Schedule employment:** As per the Minimum Wages Act, it means an employment specified in the Schedule or any process or branch of work forming part of such employment.

9.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. What does Section 3 say about fixation of the minimum rates of wages in terms of entire or part state?
2. List the content of Section 3(1) of the Minimum Wages Act.
3. Write a short note on the constituents of minimum wage rate as per Section 4 of the Minimum Wages Act.

Long Answer Questions

1. Explain the principle objects and applicability of the Minimum Wages Act, 1948.
2. Examine the concept of review of wages already fixed, procedure for fixing and revision of minimum wages.

NOTES

9.8 FURTHER READINGS

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

Kuchhal, M C. 2012. *Business and Industrial Laws, Second Edition*. New Delhi: Vikas Publishing House.

Padhi, P K. 2017. *Labour and Industrial Laws, Third Edition*. New Delhi: PHI Learning.

NOTES

UNIT 10 MINIMUM WAGES ACT: BOARD, PAYMENT AND REGISTERS

Structure

10.0 INTRODUCTION

In the previous unit, you were introduced to the Minimum Wages Act. This included a discussion on the objects and applicability of the Act and the varied provisions related to the fixation of the minimum wage rate. Section 5 mentions the constitution of committees to assist with the process of fixing a minimum wage rate. The Minimum Wages Act provides for the appointment of an advisory board for undertaking the role of coordinating and fixing of the wage rates. In this unit, you will learn about the provisions related to advisory board in the Minimum Wages Act.

Another important area which demands attention is the mode and calculation of wage rate for different nature and duration of work. All of this comes under the payment of minimum wages and these provisions are discussed in this unit. The maintenance of registers and notices will also be taken up. In the last section, you will learn about the provisions for claims and procedures related to minimum wages.

10.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the provisions related to the advisory board in the Minimum Wages Act

- Recall what the Minimum Wages Act says about the payment of minimum wages
- Explain the provisions for maintenance of registers
- Describe the provisions related to the claims and its procedure under the Minimum Wages Act

10.2 APPOINTMENT OF ADVISORY BOARD

In this section, you will learn about the provisions related to the appointment of advisory board.

Sec. 7. Advisory Board.

For the purpose of coordinating the work of committees and sub-committees appointed under section and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board.

Sec. 8. Central Advisory Board:

1. For the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages and other matters under this Act and for coordinating the work of the Advisory Boards, the Central Government shall appoint a Central Advisory Board.
2. The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman of the Board by the Central Government.

Composition of Committee/Advisory Board

Each of the Committees, sub-committees, and the Advisory Board shall consist of persons to be nominated by the appropriate government representing:

(i) employers in the scheduled employment;

(ii) employees in the scheduled employment.

who shall be equal in number and independent persons not exceeding one third of its total members; one of such independent persons shall be appointed as Chairman by the appropriate government [Section 9].

10.3 PAYMENT OF MINIMUM WAGES

In this section, you will learn about the important provisions related to the payment of minimum wages.

NOTES

The Mode of Payment of Minimum Rates of Wages

The wages to the workers are paid either in cash. However, where there is a custom to pay wages wholly or partly in kind, the appropriate government may authorize the payment partly or wholly in kind by the issue of notification. Further, if the appropriate government is of the opinion that provision should be made for the supply of essential commodities at concessional rates, it may authorize the supply of these articles at concessional rates. The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates, in such cases, is to be estimated in the manner prescribed under the rules [Section 11].

Payment of Minimum Rates of Wages

The Act imposes an obligation upon the employer to pay minimum rates of wages without any deduction to the workers employed in a scheduled employment wherever the appropriate government has fixed such wages by notification under Section 5 with respect to that employment [Section 12].

While section 13 specifies the conditions for fixing hours for normal working day etc., section 14 details the conditions related to overtime.

Wages of Workers who Work for Less than a Normal Working Day

If a worker whose minimum rate of wages has been fixed in a prescribed manner works for any day for a shorter period than the requisite number of hours constituting a normal working day for him then he would be entitled to receive wages for the full day from the employer except when he willfully fails to work for the normal working day without any fault on the part of the employer and for such default or other similar cases the rules provide that the wages may be deducted [Section 15].

Wages for Two or More Classes of Work

Where an employee does two or more classes of work to which a different rate of minimum wages is applicable, then the employee is entitled to receive wages from his employer in proportion to the time occupied by him in each class of work, calculated on the basis of minimum rates fixed for each of the classes of work [Section 16].

Minimum Time Rate wages for Piece Work

Where an employee is employed on piece work for which minimum rates has not been fixed but instead the appropriate government has fixed minimum time rates of wages under this Act, then the employer is required to pay to the employee engaged on piece work minimum wages not less than minimum time rate wages [Section 17].

10.3.1 Maintenance of Records and Display of Notices

Section 18 of the Minimum Wages Act deals with provisions for maintenance of records. Every employer is required to maintain registers and records containing following particulars:

(a) Particulars of employees employed by him
(b) The work performed by them
(c) The wages paid to them
(d) The receipts given by the employees
(e) Any other information as prescribed.

Notice

With regards to notice, Section 18 further says:

Section 18(2) Every employer shall keep exhibited in such manner as may be prescribed in the factory workshop or place where the employees in the scheduled employment may be employed or in the case of out-workers in such factory workshop or place as may be used for giving out work to them notices in the prescribed form containing prescribed particulars.

Section 18 (3) The appropriate government may by rules made under this Act provide for the issue of wage books or wage slips to employees employed in any scheduled employment in respect of which minimum rates of wages have been fixed and prescribed to manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

10.4 CLAIMS AND PROCEDURE

In this section, provisions of the minimum wages Act related to claiming unpaid minimum wages and its procedure will be disscussed.

(i) Introduction

The appropriate government is empowered to appoint by notification in the Official Gazette an authority to hear and decide for any specific are claims arising out of (i) payment of less than minimum rates of wages, (ii) overtime rates and (iii) payment for work done on a day of rest to the employees employed by an employer of that area [Section 20(1)].

(ii) Who can be appointed as authority

Any one of the following persons may be appointed as an Authority to decide any claims relating to the matters specified above:

(a) Any Commissioner for Workmen's Compensation
(b) Any officer of the Central Government exercising functions as a Labour Commissioner for any region

(c) Any officer of the State Government not below the rank of Labour Commissioner

(d) Any officer with experience as a Judge of Civil or Stipendiary Magistrate.

(e) (i) The employee himself, or (ii) any practitioner, or (iii) any officer of a registered Trade Union Authorized in writing to Act of his behalf, or (iv) any inspector or any person acting with the permission of the Authority before whom the claim is preferred may make an application.

(iii) Time for making claims

The application for claim is required to be presented within six months from the data on which the minimum wages or other amount becomes payable. But application can be admitted after six months if the applicant satisfies the Authority that he could not make the application within the prescribed time for 'sufficient cause'.

(iv) Procedure for deciding claims

When an application for the claim is entertained, the Authority is required to hear the applicant and the employer and afford them all reasonable facilities to present their case and hold any enquiry which he may deem necessary. If after holding an enquiry into the merit of the claim the Authority comes to the conclusion that the employer has made a default, then it may direct the employer to pay the difference between the minimum wage payable to him and the wages actually paid to him.

(v) Recovery of amount

The Authority before whom the claim is preferred by a worker against an employer is vested with a power to order the recovery of the amount due in favour of a worker as it was a fine imposed on the employer in case the Authority happens to be a Magistrate. But in case the Authority is other than a Magistrate, then on the application of the Authority to the Magistrate vested with a power to decide a claim under the Act, the amount due to the worker can be recovered on the orders of the Magistrate like a fine [Section 20(5)].

10.4.1 Contracting Out

Section 25 of the Minimum Wages Act deals with the provision for contracting out. The Section prescribes:

Any contract or agreement whether made before or after the commencement of this Act whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

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10.4.2 Exemption of Employer from Liability in Certain Cases

Section 23 deals which the provision related to exemption of employer from liability in certain cases. The Section prescribes:

Where an employer is charged with an offence against this Act he shall be entitled upon complaint duly made by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if after the commission of the offence has been proved the employer proves to the satisfaction of the court-

(a) that he has used due diligence to enforce the execution of this Act and

(b) that the said other person committed the offence in question without his knowledge consent or connivance.

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged:

Provided that in seeking to prove as aforesaid the employer may be examined on oath and the evidence of the employer or his witness if any shall be subject to cross-examination by or on behalf of the person whom the employer charges as the actual offender and by the prosecution.

Check Your Progress

1. What does Section 9 of the Minimum Wages Act deal with?
2. Name the Section which deals with the maintenance of records and display of notices.
3. List the specific claims for which an appropriate government may appoint an authority.
4. What is the time period within which the application for claim is required to be presented?

10.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. Section 9 of the Minimum Wages Act deals with the composition of Committee/Advisory Board.
2. Section 18 of the Minimum Wages Act deals with the maintenance of records and display of notices.
3. The appropriate government is empowered to appoint by notification in the Official Gazette an authority to hear and decide for any specific are claims arising out of (i) payment of less than minimum rates of wages, (ii) overtime rates and (iii) payment for work done on a day of rest to the employees employed by an employer of that area [Section 20(10)].

4. The application for claim is required to be presented within six months from the date on which the minimum wages or other amount becomes payable.

10.6 SUMMARY

- For the purpose of coordinating the work of committees and sub-committees appointed under section and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board.
- Section 8 and 9 of the Minimum Wages Act deal with the provisions for related to the appointment and composition of Advisory Committee and Board.
- Section 11 to 17 of the Minimum Wages Act provides rules for the mode, calculation based on classes of payment of minimum wages.
- The provisions of Section 18 specify the particulars related to the maintenance of registers, and records, and display of notices.
- Section 20 of the Minimum Wages Act provides provisions related to the cases and manner in which claims can be made for specified issues of minimum rate of wages.
- Section 25 mentions the provisions related to contracting out.

10.7 KEY WORDS

- **Advisory Board:** For the purpose of coordinating the work of committees and sub-committees appointed under section and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board.
- **Wages in kind:** It consist of goods and services, or other benefits, provided free or at reduced prices by employers, that can be used by employees in their own time and at their own discretion, for the satisfaction of their own needs or wants or those of other members of their households.

10.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. What does Section 8 of the Minimum Wages Act say about the Central Advisory Board?
2. List the particulars which every employer is required to maintain under the Minimum Wages Act.
3. What does Section 18 prescribe with regards to display of notices?

NOTES

4. Write a short note on 'contracting out' as mentioned in the Minimum Wages Act.

Long Answer Questions

1. Explain the provisions related to the (i) payment of minimum rates of wages, (ii) mode of payment, (iii) wages for two or more classes of work and (iv) minimum time rate wages for piece work.
2. Examine the provisions mentioned in the Minimum Wages Act pertaining to Claims.

10.9 FURTHER READINGS

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

Kuchhal, M C. 2012. *Business and Industrial Laws, Second Edition*. New Delhi: Vikas Publishing House.

Padhi, P K. 2017. *Labour and Industrial Laws, Third Edition*. New Delhi: PHI Learning.

NOTES

UNIT 11 MINIMUM WAGES ACT: POWERS, OFFENCES AND PENALTIES

Structure

11.0 INTRODUCTION

The Minimum Wages Act was prepared and passed to provide for fixing minimum rates of wages in certain employments. You have learnt about the objects and applicability of the Act in terms of scheduled employments, the procedure for fixation of minimum rates of wages, the appointment of advisory boards, the maintenance of registers as well as manner of claiming certain bonuses. There was a mention of 'appropriate government' in Unit 9. In this unit, you will learn exactly what are the powers of this 'appropriate government'. There are also specific provisions in the Minimum Wages Act detailing the manner in which offences and penalties are to be dealt with. Therefore, the provisions of offences and penalties will also be discussed in this unit.

11.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the powers of appropriate governments under the Minimum Wages Act
- Explain the provisions for offences and penalties

11.2 POWER OF APPROPRIATE GOVERNMENT

The Minimum Wages Act has defined the term 'appropriate government'. You have learnt that as per Section 2(b), 'appropriate Government' means,— (i) in

relation to any scheduled employment carried on by or under the authority of the Central Government, by a railway administration, or in relation to a mine, oilfield or major port, or any corporation established by an Act of the Central Legislature, and (ii) in relation to any other scheduled employment, the State Government. In this section, you will learn about the powers of the said 'appropriate government'. You will also learn about what the Act says about the powers of Central and State Governments in relation to matters of this Act.

Power of Appropriate Government to Make Rules

Section 30 of the Minimum Wages Act says:

(1) The appropriate government may subject to the condition of previous publication by notification in the Official Gazette make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power such rules may –

- (a) prescribe the term of office of the members the procedure to be followed in the conduct of business the method of voting the manner of filling up casual vacancies in membership and the quorum necessary for the transaction of business of the committees sub-committees and the Advisory Board;
- (b) prescribe the method of summoning witnesses production of documents relevant to the subject-matter of the enquiry before the committees sub-committees and the Advisory Board;
- (c) prescribe the mode of computation of the cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates;
- (d) prescribe the time and conditions of payment of and the deductions permissible from wages;
- (e) provide for giving adequate publicity to the minimum rates of wages fixed under this Act;
- (f) provide for a day of rest in every period of seven days and for the particulars to be entered in such registers and records;
- (g) prescribe the number of hours of work which shall constitute a normal working day;
- (h) prescribe the cases and circumstance in which an employee employed for a period of less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day;
- (i) prescribe the form of registers and records to be maintained and the particulars to be entered in such registers and records;

(j) provide for the issue of wage book and wage slips and prescribe the manner of making and authenticating entries in wage books and wage slips;

(k) prescribe the powers of Inspectors for purposes of this Act;

(l) regulate the scale of costs that may be allowed in proceedings under section 20 and

(m) prescribe the amount of court-fees payable in respect of proceedings under section 20; and

(n) provide for any other matter which is to be or may be prescribed.

11.2.1 Powers of the State and Central Government to Make Rules

Sections 27 to 29 and 30 of the Minimum Wages Act prescribes rules regarding the powers of the State and Central Governments.

Power of State Government to add to Schedule

Section 27 prescribes that the appropriate government after giving by notification in the Official Gazette not less than three months' notice of its intention so to do may by like notification add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act and thereupon the Schedule shall in its application to the State be deemed to be amended accordingly.

Power of Central Government to give directions

Section 28 of the Act says that the Central Government may give directions to a State Government as to the carrying into execution of this Act in the State.

Power of Central Government to make rules

Section 29 of the Minimum Wages act prescribes that the Central Government may subject to the condition of previous publication by notification in the Official Gazette make rules prescribing the term of office of the members the procedure to be followed in the conduct of business the method of voting the manner of filling up casual vacancies in membership and the quorum necessary for the transaction of business of the Central Advisory Board.

Rules made by Central Government to be laid before Parliament

Section 30 A of the Act says that every rule made by the Central Government under this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect as the case may be so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

NOTES

Check Your Progress

1. As per Section 30 of the Minimum Wages Act, the appropriate government has the power to prescribe the powers of which of the two figures: advisory board or the inspectors?
2. Which Section of the Minimum Wages Act allows Central Government the right to give directions to the State Government for executing the Act in the State?
3. Mention the time period for which the State Government must issue a notice of its intention for adding an employment in the Schedule of the Minimum Wages Act.

11.3 PENALTIES AND OFFENCES

In this section, you will learn about what the Minimum Wages Act prescribes with regards to penalties and offences.

Penalties for certain offences

Section 22 of the Act prescribes that:

Any employer who

(a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act or

(b) contravenes any rule or order made under section 13;

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both:

Provided that in imposing any fine for an offence under this section the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

General provision for punishment of other offences

Section 22 A of the Minimum Wages Act says that any employer who contravenes any provision of this Act or of any rule or order made thereunder shall if no other penalty is provided for such contravention by this Act be punishable with fine which may extend to five hundred rupees.

Cognizance of offences

As per Section 22 B:

(1) No court shall take cognizance of a complaint against any person for an offence –

(a) under clause (a) of section 22 unless an application in respect of the facts constituting such offence has been presented under section 20 and has been granted wholly or in part and the appropriate government or an officer authorized by it is this behalf has sanctioned the making of the complaint;

(b) under clause (b) of section 22 or under section 22A except on a complaint made by or with the sanction of an Inspector.

(2) No court shall take cognizance of an offence –

(a) under clause (a) or clause (b) of section 22 unless complaint thereof is made within one month of the grant of sanction under this section;

(b) under section 22A unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Offences by companies

As per Section 22 C:

(1) If the person committing any offence under this Act is a company every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director manager secretary or other officer of the company such director manager secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section –

(a) "company" means any body corporate and includes a firm or other association of individuals and

(b) "director" in relation to a firm means a partner in the firm

Payment of undisbursed amounts due to employees

Section 22 D says that all amounts payable by an employer to an employee as the amount of minimum wages of the employee under this Act or otherwise due to the employee under this Act or any rule or order made thereunder shall if such amounts could not or cannot be paid to the employee on account of his death before payment or on account of his whereabouts not being known be deposited with the prescribed

authority who shall deal with the money so deposited in such manner as may be prescribed.

Bar of suits

Section 24 of the Minimum Wages Act prescribes that:

No court shall entertain any suit for the recovery of wages in so far as the sum so claimed –

(a) forms the subject of an application under section 20 which has been presented by or on behalf of the plaintiff or

(b) has formed the subject of a direction under that section in favor of the plaintiff or

(c) has been adjudged in any proceeding under that section not to be due to the plaintiff or

(d) could have been recovered by an application under that section.

Check Your Progress

4. What is the punishment prescribed for committed 'certain offences' as per Section 22 of the Minimum Wages Act?
5. Mention the Section of the Minimum Wages Act which contains provisions related to 'cognizance of offences'.

11.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. As per Section 30(k) of the Minimum Wages Act, the appropriate government has the power to 'prescribe the powers of Inspectors for purposes of this Act'.
2. Section 28 of the Act says that the Central Government may give directions to a State Government as to the carrying into execution of this Act in the State.
3. Section 27 prescribes that the appropriate government after giving by notification in the Official Gazette not less than three months' notice of its intention so to do may by like notification add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act.
4. The punishment prescribed for committed 'certain offences' as per Section 22 of the Minimum Wages Act is that the offender 'shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.'

5. Section 22B of the Minimum Wages Act contains provisions related to 'cognizance of offences'.

11.5 SUMMARY

NOTES

- The Minimum Wages Act has defined the term 'appropriate government'. As per Section 2(b), 'appropriate Government' means,— (i) in relation to any scheduled employment carried on by or under the authority of the Central Government, by a railway administration, or in relation to a mine, oilfield or major port, or any corporation established by an Act of the Central Legislature, and (ii) in relation to any other scheduled employment, the State Government. In this section, you will learn about the powers of the said 'appropriate government'.
- Section 30 of the Minimum Wages Act says: (1) The appropriate government may subject to the condition of previous publication by notification in the Official Gazette make rules for carrying out the purposes of this Act, (2) Without prejudice to the generality of the foregoing power certain specific rules.
- Sections 27 to 29 and 30 of the Minimum Wages Act prescribes rules regarding the powers of the State and Central Governments.
- Minimum Wages Act prescribes with regards to penalties and offences. The following issues are Penalties for certain offences, General provision for punishment of other offences, Cognizance of offences, Offences by companies, Payment of undisbursed amounts due to employees, Exemption of employer from liability in certain cases and Bar of suits.

11.6 KEY WORDS

- **Quorum:** The minimum number of members of an assembly or society that must be present at any of its meetings to make the proceedings of that meeting valid.
- **Plaintiff:** A person who brings a case against another in a court of law.

11.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. What is an appropriate government as per the Minimum Wages Act?
2. Write a short note on the powers of the State and Central Government to make rules as per the Minimum Wages Act.

3. Briefly explain the passage and passing of the rules made by the Central government in the Parliament as per the Minimum Wages Act.

Long Answer Questions

1. Explain the powers of the appropriate government to make rules as per the Minimum Wages Act.
2. Examine the provisions of the Minimum Wages Act which deal with the offences and penalties.

11.8 FURTHER READINGS

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

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Padhi, P K. 2017. *Labour and Industrial Laws, Third Edition*. New Delhi: PHI Learning.

BLOCK - IV

STANDING ORDERS AND LEVELS OUTS

UNIT 12 INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT: CONCEPT, CERTIFICATION AND OPERATION

Structure

12.0 INTRODUCTION

The origins of industrial laws find a strong base in the policy of laissez-faire, this meant that the market demand and supply was the dominant factor in deciding the wages, and other related matters. But this policy was rooted in the concept of individual bargain which was mutually agreed to. This agreement was mostly left independent by the State which assumed that the bargaining would balance out the interests of the parties involved. This was far from the case. The terms and conditions were mostly tilted in the favour of the employers. Among several reasons including fear of livelihood, lessor opportunities, low income and lack of union, the workmen could not bargain, and this necessitated the intervention of the State.

In India, the precursor to the Industrial Employment (Standing Orders) Act, 1946 was the Bombay Industrial Disputes Act, 1938 which tried to get the employers to define the conditions and terms of employment. But this Act did not cover the issue of standing order, nor did the Trade Disputes Act, 1929 (Central). And this need was fulfilled with the passage of the Industrial Employment (Standing Orders) Act, 1946. In this unit, you will learn about the provisions regarding certification and operation of standing Orders, the coverage of the Act as well as the concept and nature of standing orders.

12.1 OBJECTIVES

After going through this unit, you will be able to:

- Explain the provisions regarding certification and operation of standing orders
- Discuss the coverage of the Industrial Employment (Standing Orders) Act, 1946
- Describe the concept and nature of standing orders

12.2 PROVISIONS REGARDING CERTIFICATION AND OPERATION OF STANDING ORDERS

The modern law of industrial employment requires that the terms of employment, conditions of service and rules of discipline should not only be written and known to the employees concerned but they should also be reasonable, fair and uniform. Before the passing of the Industrial Employment (Standing Orders) Act, 1946, conditions of service of industrial employees were invariably ill-defined and were hardly ever known with even a slight degree of precision to the employees. Further, in many industrial establishments, the conditions of service of employees were not uniform and were not even reduced to writing. No doubt, in some large scale industrial establishments, there were standing orders and rules to govern the day-to-day relations between the employers and workers but such standing orders or rules were one-sided and were very elastic to suit the convenience of employers. Further, neither workers' union nor the government was consulted before these rules or standing orders were framed and more often than not, they gave an upper hand to employers in respect of all disputable points. This state of affairs resulted in discriminatory treatment between employers and employees, though all of them were appointed in the same premises and for the same and similar work. Indeed, it was not only detrimental to the interest of workers but even against the interest of industry because 'it resulted in unnecessary industrial conflicts'. Further, it was not in conformity with social justice, inasmuch as there being no statutory protection available to the workmen. Indeed, the contract of service was often so unnatural in character that it would be described as mere manifestation of subdued wish of the workmen to sustain their living at any cost. An agreement of this nature was an agreement between two unequals, namely, those who invested their labour and toil, flesh and blood and those who brought in capital. Moreover, this was incompatible with the principles of collective bargaining and rendered their effectiveness difficult, if not impossible. The Statement of Objects and Reasons states that, 'experience has shown that standing orders defining the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc., go a long way towards minimizing friction between the management and workers in industrial undertakings'. In order to overcome this difficulty and achieve harmony and peace,

the Industrial Employment (Standing Orders) Act, 1946 was enacted requiring the management to define with sufficient precision and clarity the conditions of employment under which the workmen were working in their establishments. Thus, the preamble makes it expedient to define the conditions of employment under them and to make the said conditions known to the workmen employed by them.

Each industrial undertaking in the private sector enjoys the power to offer conditions of service to its employees as deemed just and proper by it. This has resulted in different industrial undertakings operating in the same industry often offering different conditions of service to the employees and this has resulted in unnecessary irritation and bitterness amongst the employees serving in the same industry. The Act was enacted to curb the powers of the employer to offer such conditions of service as would result in exploitation and bring about uniformity in conditions of service amongst employees working in different industrial establishments in the same industry. The Act imposes an obligation on the employer to explain and state the terms and conditions of service before a person accepts the employment. The Act seeks to define the terms and conditions of employment of all categories of employees who discharge the same or similar work in an industrial establishment and to make those terms and conditions widely known to all workmen before they could be asked to express their willingness to accept the employment. The Act also aimed at achieving a transition from mere contract between unequals to the conferment of 'status' on workmen through conditions statutorily imposed upon the employers by requiring every industrial establishment to frame 'standing orders' in respect of the matters enumerated in the Schedule appended to the Act. This would result in employees securing clear and unambiguous conditions of their employment so as to avoid any confusion in the minds of the employer and employees of their rights and obligations concerning the terms and conditions of employment and thereby avoid unnecessary industrial disputes.

Industrial Employment (Standing Orders), 1946 is an Act specially designed to define the terms of employment of workmen in industrial establishments, to give the workmen collective voice in defining the terms of employment and to subject the terms of employment to the scrutiny of quasi-judicial authorities by the application of the test of fairness and reasonableness. It is an Act giving recognition and form to hard-won and precious rights of workmen.

The Act, in its original form was, 'designed only for the purpose of ensuring that conditions of service, which the employer laid down, became known to the workmen.' However, the liberty of the employer in prescribing the conditions of service was only limited to the extent that the standing orders had to be in conformity with the provisions of the Act and as far as practicable, in conformity with Model Standing Orders. The certifying officer or the appellant authority were debarred from adjudicating upon the fairness or the reasonableness of the provisions of the standing orders. To meet this deficiency, in 1956, Parliament widened the scope of the Act. It now casts a duty upon the certifying officer 'to adjudicate upon the fairness or reasonableness of the draft standing orders.'

NOTES

Constitutional Validity of Automatic Termination of Service under Standing Orders

In *D K Yadav* v. *J M A Industries Ltd.*, the Supreme Court held that the principles of natural justice are mandates of Articles 14 and 21. In view of this, the Court ruled that the principles of natural justice must be read wherever the standing orders provide for automatic termination of service for absence without leave.

In *Sudhir Chandra Sarkar* v. *TISCO* too, it was held that certified standing orders would be subject to the test of arbitrariness under Article 14 of the Constitution.

In *Hindustan Paper Corpn.* v. *Purnendu Chkrobarty*, an employee absented from duty without prior sanction for about 6 months by sending applications for leave on medical ground but not supporting them with medical certificates. On these facts, the Supreme Court held that it would be deemed that the employee had lost the lien on the job when he had failed to avail the opportunity by replying in half-hearted way and not reporting for duty.

In *Punjab and Sind Bank* v. *Sakattar Singh*, it has been held that the termination of a bank employee absenting for 190 days without holding an inquiry will not be violative of principles of natural justice.

In *Syndicate Bank* v. *The General Secretary, Syndicate Bank Staff Association.*, the termination of a bank employee without holding of inquiry who absented for 582 days in a span of 628 days was held to be justified when the management had complied with the bipartite settlement.

The provisions regarding certification and operating of standing orders mentioned in the Industrial Employment (Standing Orders) Act, 1946 are mentioned in Sections 4-10 of the Act. These sections include different concepts detailing procedures related to submission of draft standing orders by employers, conditions for certification of standing orders and procedure for certification of standing orders. These concepts include topics related to cost, registration, model drafts, etc. These topics will be better understood when studied in conjunction with the powers of the certifying officer of the standing orders. Therefore, these sections will be picked up in the next unit.

Check Your Progress

1. In which year was the Industrial Employment (Standing Orders) Act passed?
2. How did the Parliament widen the scope of the Industrial Employment (Standing Orders) Act in 1956?

12.3 COVERAGE OF THE ACT

In this section, you will learn about the industrial establishments covered, establishments which are excluded and exempted as well as the workers and employers covered under the Industrial Employment (Standing Orders) Act.

I. Industrial Establishments

In this section, let's discuss the coverage, exemption and exclusion of industries.

A. Industrial Establishments Covered

The Act applies to every industrial establishment wherein 100 or more workmen are employed, or were employed on any day of the preceding 12 months. Several states have extended the application of the Act to establishments employing 50 or more persons. The (Second) National Commission on Labour has recommended that establishments employing 20 or more workers should have standing orders or regulations. There is no need to delimit the issues on which standing orders can or need be framed. As long as the two parties agree, all manner of things including multi-skilling, production, job enrichment, productivity, and so on can also be added. These standing orders will be prepared by the employer(s) in consultation with the recognized unions/federations/centres depending upon the coverage, and where there is any disagreement between the parties, the disputed matter will be determined by the certifying authority having jurisdiction, to which either of the parties may apply. Any amendment to the standing orders can be asked for by either party and agreed to by both parties or referred to the certifying authority or the labour court for determination. However, no demand for amendment can be made until at least a year has elapsed. The appropriate government may prescribe a separate model standing order for units employing less than 50 workers. We append a draft of model standing orders for such small establishments. The employer will have to append a copy of model standing orders or the standing orders, mutually agreed upon with the workers, to the appointment letter of every employee.

The problem connected with the aforesaid provision is whether the fall in the number of workmen below 100 at any time would make the Act inapplicable. The division bench of the Bombay High Court in *Balakrishna Pillai* v. *Anant Engineering Works Pvt. Ltd* answered it in negative. The Court gave three reasons in support of its conclusion: *First*, the provision of Section 1 (3) 'related to initial application of the Act as the condition precedent *viz*., the number of workmen.' 'There was nothing in the provisions of the Act providing for cessation or discontinuance of the application of the Act to an establishment on account of fall in the number of workmen or on any other account.' *Second*, 'the Act is a beneficial social legislation enacted for the purpose of defining with certainty the terms of contract of employment and thus guaranteeing the workmen their conditions of service.' *Finally*, 'an interpretation which promotes the objects and purposes of the Act will have to be preferred to one which will only defeat the same.'

(*i*) an industrial establishment (ii) of the Payment of Wages Act defines 'industrial or other establishment' to mean any:

- (i) tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

(ii) air transport service, other than such service belonging to or exclusively employed in the military, naval or air forces of the Union or civil aviation department of the Government of India;

(iii) dock wharf or jetty;

(iv) inland vessel, mechanically propelled;

(v) mine, quarry or oilfield;

as defined in clause (*ii*) of Section 2 of the Payment of Wages Act, 1936; or

(*ii*) a factory 'factory' to mean 'any premises' including the precincts thereof:

(i) whereon 10 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon 20 or more workers are, working, or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on but does not include a mine, subject to the running shed or hotel, restaurant or eating place.

A delineation of the above statutory definition of 'factory' requires that a factory must have premises (including the precincts) where 'manufacturing process' is being carried on. The word premises is defined in Murray's Oxford Dictionary as a 'house or building with its ground or other appurtenancy.' According to the ordinary use of this expression, when speaking of a concern like a factory, 'premises' will include all the buildings of a factory, together with the compound in which they stand. A 'precinct' is defined in the same dictionary as 'the space enclosed by the walls or other boundaries of a particular place, or building' and more vaguely, the space lying immediately around a place, without distinct reference to any enclosure.' (1) The expression 'manufacturing process' has been defined in Section 2 (k) to mean any process for –

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking tip, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport delivery, or disposal; or

(ii) pumping oil, water or sewage; or,

(iii) generating, transforming or transmitting power; or,

(iv) as defined in clause (m) of Section 2 of the Factories Act, 1948 or

(*iii*) a railway as defined in clause (4) of Section 2 of the Railways Act, 1890, or

(*iv*) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen.

The scope of the aforesaid definition has been delineated in a number of decided cases. Conflicting views have, however, been expressed on the issue whether 'industrial establishment' covers state electricity boards. While the Allahabad and Patna High Courts included the same; the Madras High Court excluded it. The Supreme Court has, however, approved the view of Allahabad and Patna High Courts. Further, Employees' State Insurance Corporation has been excluded by the aforesaid definition, therefore, the provisions of IESOA do not apply to them. Decisions also indicate that the standing orders famed in an industrial establishment by an electrical undertaking do not cease to be operative on the purchase of the undertaking by the board or enframing the regulation under Section 79 of the Electricity Supply Act, 1948. Courts have also held that the definition of 'industrial establishment' under IESOA having been incorporated from the definition of that term in the Payment of Wages Act, 1936, the position of the latter Act at the time of the enactment of 1946-legislation above would be material and any other or subsequent addition or amendment to the 1936-Act would be of no avail.

The appropriate government is empowered to extend the provisions of the Act to an industrial establishment employing less than 100 workmen by giving 2 months' notice and issuing notification in the official gazette and specifying the number in the notification.

B. Establishments Excluded

The Act is, however, not applicable to:

(*i*) any industry to which the provisions of Chapter VII of the Bombay Industrial Relation Act, 1946 apply; or

(*ii*) any industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 apply:

Provided that notwithstanding anything contained in the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 … the provisions of this Act shall apply to all industrial establishments under the control of the Central Government.

C. Exempted Establishments

Section 1 (4) of the IESOA provides:

Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilian in Defence Service (Classification, Control and Appeal Rules or the Indian Railways Establishment Code of any other rules or regulation that may be notified in this behalf by the appropriate government in the official gazette, apply.

The opening words of Section 13-B namely 'nothing in the Act shall apply' have been interpreted by the Supreme Court in UP *State Electricity Board* v.

Hari Shankar Jain to exclude the applicability of the Act to the extent to which the rule or regulation covers the field. According to the Court, to give any other construction would lead to injustice and would once again place workmen at the mercy of the employer to be so benign and would promote industrial strife. The view is in conformity with the Directive Principles of State Policy enshrined in Articles 42 and 43 of the Constitution. Further, the expression 'workmen … to whom … any other rules or regulations that may be notified in this behalf' occurring in Section 13-B means 'workmen enjoying of rules or regulation.' The expression cannot be construed so narrowly as to mean government servants only; nor can it be construed so broadly to mean workmen employed by whomsoever including private employers, so long their conditions of service are notified by the government under Section 13-B. The mere fact that the electricity board had adopted the rules and regulations of the government of Madras as its transitory rules and regulations did not bring the workmen employed in industrial establishments under the board within the mischief of Section 13 B of the IESA.

D. Government's Power to Exempt

The appropriate government is empowered to exempt conditionally or unconditionally

(i) any industrial establishment, or (*ii*) class of establishments from all or any of the provisions of the Act. This should be done by notification in the official gazette. In exercise of this power, the following industrial establishments in central sphere have been exempted from the provisions of the Act as on 31 December 1978:

1. All major ports of Bombay, Calcutta, Madras, Cochin, Vishakapatnam and Kandala including their own railways;
2. Government of India presses (excluding security presses);
3. Training establishments in connection with the re-settlement training schemes in vocational training centres under the control of the directorate general of employment and training;
4. Map production and printing offices known as Hathibarkala Litho Office and Photolitho Office, Dehradun and Photolitho Office at Calcutta;
5. Delhi Road Transport Authority;
6. Mechanical workshop at Hirakund;
7. Industrial establishments of the zonal railways including the Integral Coach Factory, Perambur and Chittranjan Locomotive Works.
8. The Indian Veterinary Research Institute, Izatnagar/Mukteshwar.
9. Industrial establishment owned by the Port Trust Authority administering the port at Paradip.

An analysis of the aforesaid provisions reveals that the coverage of the Act is inadequate and needs to be broadened. In this connection, it is relevant

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to note that Section 72 of the Industrial Relations Bill, 1978 *inter alia*, provided:

The provisions of this Chapter shall not apply to any industrial establishments or undertaking to:

(*a*) which ordinarily employs less than 50 employees; or

(*b*) which, during the period of 12 months immediately preceding the commencement of this Act, ordinarily employed less than 50 employees.

The Bill could have provided relief to workers not covered under the IESOA, but as stated earlier, the Bill could not find the colour of the Act and so it lapsed.

II. Workers Covered

Section 2 (i) of the Industrial Employment (Standing Orders) Amendment Act, 1982 provides that the 'workman' has the meaning assigned to it in clause (s) of Section 2 of the Industrial Disputes Act, 1947.

III. Employer Under the Act

Section 2 (d) of the IESOA defined 'employer' to mean:

The owner of an industrial establishment to which this Act for the time being applies, and includes:

(*i*) in a factory, any person named under clause (*f*) of sub-section (1) of Section 7 of the Factories Act, 1948 (Act 63 of 1948), as manager of the factory.

(*ii*) in any industrial establishment under the control of any department of any government in India, the authority appointed by such government in this behalf, or where no authority is so appointed, the head of the department;

(*iii*) in any other establishment, any person responsible to the owner for the supervision and control of the industrial establishment. In *Hari Shankar Jain* v. *Executive Engineer, Rural Electricity Division*, the Allahabad High Court held that the employer would include the state electricity board since it was the owner of the industrial establishment by virtue of its compulsory purchase. It also held that unless there was any other provision to the contrary, even the state government, if it happened to be the owner of an industrial establishment, would fall within the ambit of the definition of 'employer.'

Check Your Progress

3. State the minimum number of workmen that must be employed in an industrial establishment for it to be covered under the Act.
4. Name the Act which provides the definition of 'workman' as mentioned in the Industrial Employment (Standing Orders) Act, 1946.

12.4 CONCEPT AND NATURE OF STANDING ORDERS

NOTES

In this section, you will learn the concept and nature of standing orders defined in the Industrial Employment (Standing Orders) Act 1946.

I. The Concept of Standing Orders

A. The Definition

Section 2 (g) of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as IESOA) defines 'standing orders' to mean: 'Rules relating to matters set out in the Schedule'

Thus, the items which have to be covered by the standing orders in respect of which the employer has to make a draft for submission to the certifying officers are matters specified in the schedule.

B. Content of the Schedule

The matters referred to in the Schedule are:

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or *badlis*
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates
3. Shift working
4. Attendance and late coming
5. Conditions of procedure in applying for, and the authority which may grant leave and holidays
6. Requirements to enter premises by certain gates and liability to search
7. Closing and re-opening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom
8. Termination of employment, and the notice thereof to be given by employer and workmen
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants
11. Any other matter which may be prescribed

The enumeration of the aforesaid items is not exhaustive. There seems to be no reason for including certain items and excluding many other important items. If the object of the IESOA is to 'give the workmen collective voice in defining the terms of employment and to subject the terms of employment to scrutiny of quasi-

judicial and judicial authorities', there is no reason to exclude many items from terms of employment and conditions of service. It is significant to note that Section 73 (1) of the Industrial Relation Bill, 1978 provided:

(*i*) The Central Government shall, by notification, make standing orders to provide for the following matters, namely:

(*a*) Classification of employees, that is to say: whether permanent, temporary, apprentice, probationers or *badlis*

(*b*) Conditions of service of employees, including matters relating to the issue of orders of appointment of employees, procedure to be followed by employees in applying for, and the authority which may grant leave and holidays

(*c*) Misconduct of employees, inquiry into such misconduct and punishment therefor

(*d*) Superannuation of employees

(*e*) Shift working of employees

The aforesaid provisions could have given great relief to workmen but it lapsed after the dissolution of the Parliament.

Quite apart from the aforesaid shortcomings, the matters enumerated in the Schedule have also been the subject-matter of judicial interpretation in a number of decided cases. Some of the items which invited the attention of the Court may be noted:

Item 5. In *Bagalakot Cement Co*. v. *R K Pathan*, the Supreme Court has interpreted 'condition' in clause 5 of the Schedule 'in a broad and liberal sense' so as to include leave and holidays.

In its view, 'to hold otherwise would defeat the very purpose of clause 5'.

Item 8. Prior to the Supreme Court decision in *U P Electricity Supply Co*. v. *T N Chatterjee*, the Madras and Orissa High Courts were divided on the issue whether the word 'termination' in Item 8 included 'termination of employment on attainment of age of superannuation'. Thus, in the *Hindu* v. *Secretary*, *Hindu Office*, the management of the Hindu had framed certain standing orders, one of the clauses of which provided that every employee shall ordinarily retire from service after completing the age of 58 years or 30 years of unbroken service, whichever is earlier. A question arose whether such a clause in standing orders is covered by any of the items of the Schedule of the Act. The Madras High Court held that termination in Item 8 of the Schedule was wide enough to govern the case of superannuation. But in *Saroj Kumar* v. *Chairman*, *Orissa State Electricity Board*, the Court took the contrary view. It held that 'superannuation' was covered by 'termination' in the Item. However, the controversy has been set at rest by the Supreme Court in *U P Electricity Supply Co*. v. *Chatterjee*. It related to retirement of certain employees on completion of the age of 55 years or 30 years of service. A question arose whether termination in Item 8 covered 'superannuation'. The

Court held that termination in Item 8 does not cover each and every form of termination or cessation of employment. In view of this it held that it did not cover 'superannuation' which is automatic and did not require notice or any act on the part of employer or workmen. The Court agreed that if termination is to be read in a wider sense as meaning employment coming to an end, there was no necessity to have Item 9 because dismissal would then be covered by termination.

Item 9. The 'misconduct' under Item 9 for which an employee can be dismissed need not necessarily have been committed in the course of his employment. It is enough if it is of such a nature as to affect his suitability for a particular employment.

Item 11. This item refers to 'any other matter which may be prescribed.' When the appropriate government adds any item to the Schedule, the relevant question to be asked would be whether it refers to the conditions of employment or not. If it does, it would be within the competence of the appropriate government to add such an item.

II. Nature of the Standing Orders

The nature of the standing order has assumed increasing importance in industrial law. It has also attracted the attention of tribunal and courts. An analysis of the decided cases relating to the nature of standing order reveals that different shades of opinion have emerged on the subject namely, it is: (*i*) statutory in nature, (*ii*) a special kind of contract, (*iii*) an 'award', and (*iv*) a form of delegated legislation. Let us turn to examine them.

A. Statutory in Character

Prior to the Supreme Court decision, the High Courts were divided on this issue. Most of the high courts were tilted on the side of statutory nature of contract.

In *Tata Chemicals Ltd* v. *Kailash C Adhvaryar*, a question directly arose before the Gujarat High Court whether a contract can override the terms of the standing orders. The Court after considering the provisions of the Act opined that:

> … on a true construction of the various provisions of the Act, the standing orders when finally certified under the Act are binding on the employer and the workmen and govern the relations between the employer and the workmen and it is not open to the employer and the workmen to contract themselves out of the rights and obligations created by the standing orders.

In *Behar Journals Ltd* v. *Ali Hasan*, the division bench of the Patna High Court also spoke in similar terms:

> … the certified standing orders have statutory force and under the above standing orders, there is a statutory contract between the employer and the workmen. It could not, therefore, be possible in law for parties … to enter into a contract overriding the statutory contract as embodied in the certified standing orders and any contract contrary to the above orders must be ignored.

The aforesaid line of view found the approval of the Supreme Court in *Bagalkot Cement Company Ltd* v. *R K Pathan*. In this case, even though the question was not directly in issue, the Court dealt with the nature of standing orders in the following words:

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> The Act made relevant provision for making standing orders which, after they are certified, constitute the statutory terms of employment between the industrial establishments in question and their employees.

And while interpreting certain provisions of the standing orders, Justice Gajendragadkar observed:

> The object of the Act ... was to require the employers to make the conditions of employment precise and definite. The Act ultimately intended to prescribe these conditions in the form of standing orders so that what used to be governed by a contract hereto before, would now be governed by the statutory standing orders... at 208.

The aforesaid view was reiterated by the Supreme Court in *Workmen of Dewan Tea Estate* v. *Their Management*. In this case, a question arose whether any provision of the Act could have overridden the provisions of the standing orders. The Court held that the standing orders could only be overridden by specific provisions of the Act, which may have been introduced after the standing order was certified. In the course of judgement, the Supreme Court explained the nature of the standing orders in the following words:

> If the standing orders thus become the part of the statutory terms and conditions of service, they will govern the relations between the parties unless, of course, it can be shown that any provision of the Act is inconsistent with the said standing orders. In that case, it may be permissible to urge that the statutory provision contained in the Act should override the standing order which had been certified before the said statutory provision was enacted.

In *Western India Match Co*. v. *Workmen*, the Court spoke in similar terms:

> The terms of employment specified in the standing orders would prevail over the corresponding terms in the contract of service in existence on the enforcement of the standing orders.

The Supreme Court in *Sudhir Chandra Sarkar* v. *Tata Iron and Steel Company* has clearly stated that the conditions of service laid down in the standing orders is either statutory in character or has statutory flavour. Similarly, certified standing orders which statutorily prescribe the conditions of service shall be deemed to be incorporated in the contract of employment of each employee with his employer. This line of view was followed in later decisions.

In U P *State Bridge Corporation Ltd* v. *U P Rajya Setu Nigam S Karmchari Sangh*, the Supreme Court held that certified standing orders constitute statutory terms and conditions of service.

A survey of the aforesaid decisions leads to the conclusion that the standing orders are statutory in nature and their violation is punishable under the Industrial Employment (Standing Orders) Act, 1946.

In *Rajasthan State Road Transport Corporation* v. *Krishna Kant*, the Supreme Court held:

> The certified standing orders framed under and in accordance with the Industrial Employment (Standing Orders) Act. 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to statutory provision. Any violation of these standing orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein. The aforesaid view was reiterated in *RSRTC* v. *Deen Dayal Sharma*.

B. A Special Kind of Contract

The other view is that standing orders are a special kind of contract. This view was expressed in *Buckingham and Carnatic Co.* v. *Venkatayaga*. Observed Justice Gajendragadkar:

> The certified standing orders represent the relevant terms and conditions of service in a statutory form and they are binding on the parties at least as much, if not more, as private contract embodying similar terms and conditions of service.

However, the high courts were more specific on the holding that the standing orders are in the nature of contract. Thus, Madras High Court in *Mettur Industries* v. *Verma* observed:

> Reading the Act as a whole, it is clear that the standing orders form part of the contract between the management and every one of its employees.

Likewise, in *Akhil Ranjan Das Gupta* v. *Assam Tribune*, Chief Justice Mehrotra speaking for the Assam High Court observed:

> the purpose of standing orders is to clarify the conditions of service and they are in the nature of a contract on which openly the employee enters into the service …

Thus, it is evident that 'though the certified standing orders have statutory flavour, the Act is directed to get the rights of an employee under a contract defined'. This was also recognized by the Supreme Court in *Guest Keen Williams Ltd* v. *Sterling and Others*:

> The standing orders certified under the Act no doubt become part of the terms of employment by operation of Section 7, but if an industrial dispute arises in respect of such (standing) orders and it is referred to the tribunal by the appropriate government, the tribunal has jurisdiction to deal with it on the merits.

In *M P Vidyut Karmchari Sangh* v. *M P Electricity Board*, the question was whether the regulations made under Section 79 (c) of the Electricity (Supply) Act, 1948 would prevail over the standing orders framed under the Act of 1961. The Supreme Court held that, 'for excluding the operation of the 1961 Act, it is imperative that an appropriate notification in terms of Section 2(2) of the 1961

Act is issued'. It has been further observed that the 1961 Act is a special law whereas the regulations framed by the board under Section 79(c) are general provisions. The maxim '*generalia special bus non derogant*' would, thus be applicable in this case.

Following the aforesaid decision in *Jabalpur Development Authority* v. *Sharad Shrivastava*, the Madhya Pradesh High Court held that SSOs will prevail over the Regulations of 1987 as these rules have not been notified under Section 2(2) of the Act of 1961. The publication of the rules in the gazette is not enough. These are required to be notified under Section 2(2) of the Act involving a conscious decision of the government in the labour department that the operation of the SSOs would be excluded and the rules would have predominance.

From the above, it appears that the standing orders may also be of the nature of special contract law.

C. Standing Orders: If 'Award'

It is sometimes said that the nature of standing orders is like an 'award'. This is argued on the basis of the provisions of Section 4 (b) which says that 'It shall be the function of the certifying officer … to adjudicate upon the fairness and reasonableness of the provisions of any standing orders' and also on the basis of judicial decision which rules that the function of the certifying officer is quasi-judicial. However, standing orders cannot be an 'award' under Section 2 (b) of the Industrial Disputes Act, 1947.

D. Standing Orders: If Form of Delegated Legislation

Sometimes, it is also argued that standing orders under IESOA is a delegated legislation. It is argued on the basis of the provision that standing orders should contain every matter set out in the Schedule and it should as far as is practicable, conform to the Model Standing Orders. But, this contention cannot be upheld, particularly when the Act imposes a duty upon the employers to submit the draft standing orders to the certifying officer and that he is required to examine the fairness and reasonableness of the standing orders and is also empowered to amend the same if they are not 'fair or reasonable'. These provisions do not conform that it is a delegated legislation. However, the Industrial Relations Bill, 1978 appears to have changed the nature of standing orders from statutory or contractual to one of delegated legislation which is evident from the provisions of Section 73 (1) and Section 73(2) of the Bill namely:

> The provisions of standing orders made under sub-section (1) may be modified by the employer, in relation to any industrial establishment or undertaking, if an agreement is entered into by him with the negotiating agent in relation to employees in such industrial establishment or undertaking for such modification …

Further, provisions of Section 76 of the Bill which provides that:

Every standing orders made by the Central Government under sub-section (1) of Section 73 shall be laid, as soon as, may be after it is made, before each house of Parliament.

Further confirms that standing orders are in the nature of delegated legislation. Needless to mention that the Bill lapsed after the dissolution of Lok Sabha.

In *RSRTC* v. *Deen Dayal Sharma*, the Supreme Court held that standing orders are not in the nature of delegated/subordinate legislation.

Check Your Progress

5. State the relevant question which needs to be asked in relation to item 11 of the Schedule of the Industrial Employment (Standing Orders) Act, 1946.
6. Are the certified standing orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 binding upon the employers and employees?

12.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The Industrial Employment (Standing Orders) Act was passed in the year 1946.
2. In 1956, the Parliament widened the scope of the Industrial Employment (Standing Orders) Act by casting a duty upon the duty of the certifying office to 'adjudicate upon the fairness or reasonableness of the draft standing orders.'
3. The Industrial Employment (Standing Orders) Act applies to every industrial establishment where in 100 or more workmen are employed or were employed on any day of the preceding 12 months. Several states have extended the application of the Act to establishments employing 50 or more persons.
4. It is the Industrial Disputes Act, 1947 which provides the definition of 'workman' as mentioned in the Industrial Employment (Standing Orders) Act, 1946.
5. The relevant question which needs to be asked in relation to item 11 of the Schedule of the Industrial Employment (Standing Orders) Act, 1946 is whether it refers to the conditions of employment or not.
6. The certified standing orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers, and employees, though they do not amount to statutory provision.

12.6 SUMMARY

- The modern law of industrial employment requires that the terms of employment, conditions of service and rules of discipline should not only be

written and known to the employees concerned but they should also be reasonable, fair and uniform. Before the passing of the Industrial Employment (Standing Orders) Act, 1946, conditions of service of industrial employees were invariably ill-defined and were hardly ever known with even a slight degree of precision to the employees.

- The Industrial Employment (Standing Orders) Act, 1946 was enacted requiring the management to define with sufficient precision and clarity the conditions of employment under which the workmen were working in their establishments.
- The Act applies to every industrial establishment wherein 100 or more workmen are employed, or were employed on any day of the preceding 12 months. Several states have extended the application of the Act to establishments employing 50 or more persons.
- The Industrial Employment (Standing Orders) Act, 1946 specifies in its Sections that industrial establishments to be covered, exempted and excluded; the power of the appropriate government to exempt and the workers as well as the employers covered.
- Section 2 (g) of the Industrial Employment (Standing Orders) Act, 1946 defines 'standing orders' to mean: 'Rules relating to matters set out in the Schedule'. Thus, the items which have to be covered by the standing orders in respect of which the employer has to make a draft for submission to the certifying officers are matters specified in the schedule.
- The nature of the standing order has assumed increasing importance in industrial law. It has also attracted the attention of tribunal and courts. An analysis of the decided cases relating to the nature of standing order reveals that different shades of opinion have emerged on the subject namely, it is: (i) statutory in nature, (ii) a special kind of contract, (iii) an 'award', and (iv) a form of delegated legislation.

12.7 KEY WORDS

- **Laissez-faire:** It refers to the abstention by governments from interfering in the workings of the free market.
- **Workmen:** As per the Industrial Dispute Act, it means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person as specified in the Act.

12.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. Write a short note on the deficiencies which necessitated the Industrial Employment (Standing Orders) Act, 1946.
2. Briefly explain the constitutional validity of automatic termination of service under standing orders.
3. List the nature of establishments excluded or exempted from the Industrial Employment (Standing Orders) Act, 1946.
4. Can standing orders be considered an 'award'?

Long Answer Questions

1. How does the Industrial Employment (Standing Orders) Act, 1946 define the industrial establishments covered under the Act? What are the problems with the definition?
2. Discuss what constitutes the 'standing orders' as mentioned in the Schedule of the Industrial Employment (Standing Orders) Act, 1946.
3. Examine the different shades of opinion on the subject of nature of standing orders.

12.9 FURTHER READINGS

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

Kuchhal, M C. 2012. *Business and Industrial Laws, Second Edition*. New Delhi: Vikas Publishing House.

Padhi, P K. 2017. *Labour and Industrial Laws, Third Edition*. New Delhi: PHI Learning.

NOTES

UNIT 13 INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT: MODIFICATION AND INTERPRETATION

Structure

13.0 INTRODUCTION

In the previous unit, you were introduced to the Industrial Employment (Standing Orders) Act, 1946. In this unit, the discussion on the act continues. The unit will examine duration and modification of standing orders, explain various provisions regarding certification and operation of standing order and also interpret the concept of standing orders. The final section of the unit will discuss the role of government under the Industrial Employment (Standing orders) Act, 1946.

13.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the power of certifying officers
- Describe the duration and modification of standing orders
- Examine the role of government under the Industrial Employment (Standing Orders) Act, 1946

13.2 POWER OF CERTIFYING OFFICER

Let us first discuss submission of draft standing orders.

I. Submission of Draft Standing Orders by Employers

The Industrial Employment (Standing Orders) Act (hereinafter referred to as IESOA) requires every employer of an 'industrial establishment' to submit draft standing orders, i.e., 'rules relating to matters set out in the Schedule' proposed by him for adoption in his industrial establishment. Such a draft should be submitted within 6 months of the commencement of the Act to the certifying officer. Failure to do so is punishable and is further made a continuing offence. The draft standing orders must be accompanied by particulars of workmen employed in the establishment as also the name of the trade union, if any, to which they belong. If the industrial establishments are of similar nature, the group of employers owning those industrial establishments may submit a joint draft of standing orders.

II. Conditions for Certification of Standing Orders

Section 4 requires that standing orders shall be certified under the Act if:

(*a*) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment;

(*b*) they are otherwise in conformity with the provision of the Act; and

(*c*) they are fair and reasonable.

Since the aforesaid conditions formed the nucleus of valid standing orders, it is necessary to examine them in the light of decided cases.

A. Matters to be Set out in the Schedule

The draft standing orders should contain every matter set out in the schedule of the Act with the additional matters prescribed by the government as are applicable to the industrial establishment. And, according to Section 4, the standing orders shall be certifiable if provisions are made therein for every matter stated in the Schedule to the Act.

B. Matters not Covered by the Schedule

The Schedule contains Clauses 1 to 10 which deal with several topics in respect of which standing orders have to make provision and Clause 11 refers to any other matter which may be prescribed. These items are not exhaustive and do not contain items on several subjects. The question then arises: whether it is permissible for the employers to frame standing orders in respect of the matters not provided in the Schedule of the Act?

The Supreme Court in *UP Electric Supply Co. Ltd* v. *TN Chatterjee* left the question open when it observed that it was unnecessary to decide the question as to whether in the absence of any item in the Schedule, any standing orders

could be framed in respect of the matter which may be certified by the certifying officer, as fair and reasonable. On the other hand, the Supreme Court in *Rohtak and Hissar Electric Supply Co.* v. *UP* considered the question squarely and observed:

Then in regard to the matter which may be covered by the standing orders, it is not possible to accept the argument that the draft standing orders can relate to matters outside the Schedule. Take, for instance, the case of some of the draft standing orders which the appellant wanted to introduce; these had reference to the liability of the employees for transfer from one branch to another and from one job to another at the discretion of the management. These two standing orders were included in the draft of the appellant. These two provisions do not appear to fall under any of the items in the Schedule; and so, the certifying authorities were quite justified in not including them in the certified standing orders. and later added:

… The employer cannot insist upon adding a condition to the standing orders which relates to a matter which is not included in the Schedule.

C. Conformity with the Provisions of the Act

In *Indian Express Employees Union* v. *Indian Express (Madurai) Ltd*, the Kerala High Court held that the framing of the standing orders is to be in conformity with the provisions of the Act. The same need not be in conformity with the appointment order or any office order of the establishment.

In *Rashtriya Chemicals and Fertilizers Ltd* v. *General Secretary*, *FCI Workers Union*, the division bench of the Bombay High Court held that the word conformity means that is should not be inconsistent. In other words, merely because the central standing orders prescribe age of 58 years, it does not mean that automatically anything other than 58 years is not in conformity.

In *Burn Standard and Company* v. *I T*, the Supreme Court deprecated the practice of correction of date of birth at the fag end of the career of an employee.

D. Conformity with the Model Standing Orders

Where model standing orders have been prescribed, that draft submitted by the employers must be in conformity with the model standing orders provided under Section 15 (2) (b) 'as far as it is practicable.' Conformity cannot be equated with identity. In other words, it does not mean that the draft standing orders must be in identical words but it means that in substance, it must conform to the model prescribed by the appropriate government. The expression 'as far as is practicable' also confirms the view. This expression indicates that the appropriate authority may permit departure from the model standing order if it is satisfied that insistence upon such conformity may be impracticable. There is, however, no provision in the Act for making more beneficial provisions of the model standing orders applicable in cases where the certified standing orders exist.

In the absence of such a provision under Section 15 (2) (b), a question arose whether the standing orders can contain matters not found in the model

standing orders. This issue was raised in *S K Seshadari* v. *HAL*. In this case, the standing orders of Hindustan Aeronautics Ltd, *inter alia*, provided the following acts and omission to be misconduct: Gambling and money lending or doing any other private business within the company's premises'.

The validity of these provisions was challenged on the ground that the model standing orders do not provide that the aforesaid acts would constitute misconduct. Upholding the validity of these provisions, the Karnataka High Court observed:

[T]he mere fact that the model standing orders do not provide for constituting particular act as misconduct, it does not mean that the standing orders cannot include such act or acts as constituting misconduct. Sub-Section (2) of Section 3 of the Act, merely provides that where model standing orders have been prescribed, the standing orders shall have to be, so far as is practicable, in conformity with such model standing orders. Model standing orders are framed in exercise of the rule-making power. The rules cannot restrict the scope and ambit of the provisions contained in the Act. Thus, the question as to whether the standing orders are within the ambit of power conferred in that regard by the Act, has to be determined with reference to the provisions contained in the Act, more especially with reference to the Schedule which forms part of the Act. Providing for certain acts and omissions in the standing orders not already provided in the model standing orders, does not make such a standing order invalid or beyond the power of the employer to make such a standing order. Applicability of the model standing orders depends upon the nature of the industrial establishment.

This view is in conformity with the object and scheme of the Industrial Employment (Standing Orders) Act.

Model Standing Order

Under the Act, model standing orders are framed and as soon as the Act applies to an industrial establishment. The employer is under an obligation to submit a draft amendment to the model standing orders as desired by him but the certifying officer has to certify the same. These model standing orders provide for minimum decent conditions of service. The Act took the first step of compelling the employer to give certain minimum conditions of service. These model standing orders were framed as early as 1948 and there are minor amendments here or there. They have undoubtedly stood the test of the time. But as the industrial employees are becoming more and more aware of their rights and concept of social justice is taking firm root, it is time that these model standing orders are comprehensively reexamined and revised. In the course of discussions, the committee came across certain suggestions relating to conditions of service which may now appropriately find their place in the model standing orders.

The model standing orders do not provide for any method or manner of recruitment, promotion, transfer or grievance procedure. Today, the employer enjoys an arbitrary discretion or an unfettered power of recruiting anyone he likes.

This definitely results in favouritism, nepotism and class of loyal workers. It becomes counter-productive to healthy trade union activity.

Recommendation of the Second National Commission on Labour: The commission has recommended that the appropriate government may also frame model standing orders, including the classification of acts of misconduct as major and minor, and providing for graded punishments depending on the nature and gravity of the misconduct, and publish them in the official gazette. Where an establishment has no standing orders, or where draft standing orders are still to be finalized, the model standing orders shall apply.

E. Fairness or Reasonableness of Standing Orders

Prior to 1956, the certifying officer had no power to go into the question of reasonableness or fairness of the draft standing orders submitted to him by the employers. His only function was to see that the draft must incorporate all matters contained in the Schedule and that it was otherwise certifiable under the Act. Such a power was also not conferred upon the appellate authority. However, this provision did not provide adequate safeguards against unfair practices in the standing orders and, therefore, caused great hardship to workmen.

In 1956, the Parliament amended the Act and thereby not only considerably widened the scope of the Act but also gave a clear expression to the change in legislative policy. Section 4, as amended by Act 36 of 1956, imposes a duty upon the certifying officer and appellate authority to adjudicate upon fairness and reasonableness of the standing orders. If they find that some provisions are unreasonable, they must refuse to certify the same. While adjudicating the fairness or reasonableness of any standing orders, the certifying officer should consider and weigh the social interest in the claims of the employer and the social interest in the demand of the workmen.

Thus, the Parliament confers the right to individual workman to contest the draft standing orders submitted by the employer for certification on the ground that they are either not fair or reasonable. Further, the workers can also apply for their modification and dispute the finality of the order of the appellate authority.

III. Procedure for Certification of Standing Orders

When the draft standing orders are submitted for certification, the certifying officer shall send a copy of the draft to the trade union, if any, or in its absence to the workmen concerned, to file objections, if any, in respect of the draft standing orders, within 15 days of the receipt of the notice. He is further required to provide hearing opportunity to the trade union or workmen concerned as the case may be. After hearing the parties he shall decide whether or not any modification of or addition to the daft submitted by the employer is necessary to render the draft certifiable under the Act and shall make an order in writing accordingly. For the purpose he shall inquire (*i*) whether the said sanding orders are in conformity with the model standing orders issued by the government; and (*ii*) whether they are

reasonable and fair. He shall then certify the standing orders with or without modification as the case may be. He shall send within 7 days authenticated copies of standing orders to employers and to the trade unions or other representatives of workmen.

IV. Certifying Officers: Their Appointment, Jurisdiction, Powers and Duties

The 'certifying officers' under the IESOA mean a labour commission or a regional labour commissioner, and includes any other officer appointed by the appropriate government, by notification in the official gazette, to perform all or any of the functions of certifying officer under the Act. He is 'the statutory representative of the Society.'

Section 11 (1) empowers certifying officer and appellate authority with all the powers of a civil court for the purposes of: (*i*) receiving evidence; (*ii*) enforcing the attendance of witnesses; and (*iii*) compelling the discovery and production of documents. He shall also be deemed to be the 'civil court' within the meaning of Section 345 and 346 of the Code of Criminal Procedure, 1973.

The aforesaid power have been conferred upon the certifying officer and appellate authority so that they may summon any witness and may not find any difficulty in holding any inquiry when the draft standing orders are submitted for certification to the certifying officer.

No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders finally certified under the IESOA shall be admitted in any court. Thus, Section 12 bars oral evidence in contradiction of written standing orders. But there is no provision prohibiting written agreement. However, in case of conflict between the general conditions of employment and special terms contained in standing orders—a written contract, the terms of special contract would prevail.

Section 11 (2) authorizes certifying officer and appellate authority to correct his own or his predecessor's (*i*) clerical mistake; (*ii*) arithmetical mistake; and (*iii*) error arising therin from any accidental slip or omission.

Jurisdiction

The Supreme Court in *Bhilai Steel Project* v. *Steel Works Union*, held that when standing orders are under consideration of the certifying officer and in the meanwhile if there is any amendment to the Industrial Employment (Sanding Orders) Act, though certifying officer had no jurisdiction at the time when he obtained the application to deal with the matter, during pendency of the application if the law is repealed and that law is to deal with such application, he can certainly entertain the same.

Section 4, we have already seen, imposes a duty upon the certifying officer/ appellate authority to:

(*i*) see whether the standing order provides for every matter set out in the schedule, which is applicable to the industrial establishment;

(*ii*) consider whether the draft standing orders are in conformity with the provisions of the model standing orders. If the certifying officer finds that some provisions of the standing orders as proposed by the employer relate to matters which are not included in the schedule, he may refuse to certify them; and

(*iii*) to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

The aforesaid duties are mandatory to be performed by the certifying officer. Further, certifying officer/appellate authority is required to discharge these duties in a fair and *quasi-judicial* manner.

V. Appeals Against Certification

A. The Legislative Scheme

Section 6 of the Industrial Employment (Standing Orders) Act, 1946, *inter alia*, provides that any person who is aggrieved by the order of certifying officer may 'within 30 days from the date on which the copies are sent,' file an appeal to the appellate authority.

The scope of the aforesaid section was examined in *Badarpur Power Engineers' Association* v. *Dy. Chief Labour Commissioner*. In this case, the Delhi High Court held that:

The word used in Section 6, on which emphasis has to be laid is 'from'. Section 9 (1) of the General Clause Act clearly provides that when in any Central Act or Regulation the word used is 'from', then the first day in a series of days shall be excluded. Section 9 of the General Clauses Act was clearly applicable to the present case and the effect of the same would be that 7 January, 1991 had to be excluded while computing the period of limitation.

B. Finality of the Decision of Appellate Authority

Section 6 also incorporates a finality clause namely that the decision of the appellate authority 'shall be final.' This provision means that there is no further appeal or revision against that order. This view finds support from Section 12 which lays down that once the standing orders are finally certified, no oral evidence can be led in any court which has the effect of adding to or otherwise varying or contradicting such standing orders. Section 6 read with Section 12 indicates that the finality given to the certification by the appellate authority cannot be challenged in a civil court. But the finality given to the appellate authority order is subject to the modification by him.

C. Appellate Authority: Its Nature and Constitution

Appellate authority means an authority appointed by the appropriate government by notification in the official gazette to exercise in such areas as may be specified in the notification of the functions of the appellate authority under the Act. But, in relation to appeal pending before the industrial court or other authority immediately

before the commencement of the Industrial Employment (Standing Orders) Amendment Act, 1963, that court or authority shall be deemed to be the appellate authority.

A survey of the official statistics regarding persons authorized to act as appellate authority under the Act reveals that only in the state of Assam and Tripura, secretary of labour department acts as appellate authority. In remaining states/ union territories, such power is exercises by quasi-judicial tribunals, like industrial tribunal/labour court. But, in the state of West Bengal, such power is vested in the High Court. Looking to the quasi-judicial function exercised by the appellate authority in many states, it is desirable if such functions are performed by the industrial tribunal/labour courts in Assam and Tripura.

D. Powers of the Appellate Authority

An appellate authority can either confirm the standing orders in the form certified by the certifying officer or amend the said standing orders by making such modification thereof or addition thereto, as he thinks necessary so as to render standing orders certifiable under the Act. He has, however, no power to set aside the orders of certifying authority. Likewise, it has no power to remand the case because it has a power whether to confirm or modify the award as it deems fit.

E. Duties of the Appellate Authority

The Act casts a duty upon the appellate authority to send copies of the order made by it to the certifying officer, employer and trade union or other prescribed representatives of the workmen within 7 days of the date of the order, 'unless it had confirmed without amendment the standing orders as certified by the certifying officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.'

The aforesaid provision is akin to a provision requiring the drawing up of the degree in pursuance of the orders passed by a civil court. The Act requires the appellate authority to send copies to the authorities mentioned therein after effecting amendments or modification in terms of its order within 7 days of the order. In other words, the obligation to draw up standing orders in conformity with the orders passed in appeal is placed before the appellate authority and that obligation has to be discharged within the period of 7 days from the date of the order under sub-section (1).

VI. Date of Operation of Standing Orders or Amendments

Section 7 sets out the date on which the standing orders or amendments made thereto would become operative. It provides that the standing orders shall come into operation on the expiry of 30 days from the date on which authenticated copies thereof are sent as required by sub-section (5) of Section 3, or where an appeal is preferred on the expiry of 7 days from the date on which the copies of the appellate order are sent under sub-section (2) of Section 6.

VII. Binding Nature and Effect of Certified Standing Orders

There is no specific provision in the Act dealing with the binding nature and effect of standing orders. In the absence of any provision, courts have held that a standing order certified under IESOA is binding upon the employers and employees of the industry concerned. However, the decided case reveals that even though they are binding, they do not have such force of laws as to be binding on industrial tribunals adjudicating on industrial dispute.

In *Guest Keen Williams (Pvt.) Ltd* v. *P J Sterling*, Justice Gajendragadkar delivering the judgement of the Supreme Court explained the position:

> … the standing orders when they were certified became operative and bound the employer and all the employees.

Buckingham and Carnatic Co. v. *Venkatian* spoke more in terms of the binding nature of standing orders:

The certified standing orders represent the relevant terms and conditions of service in a statutory form and they are binding on the parties at least as much, if not more, as a private contract embodying similar terms and conditions of service.

But, in *Tata Chemicals* v. *Kailash C. Adhvaryet*, the Gujarat High Court observed that:

> the standing order when finally certified under the Act becomes operative and binds the employer and the workmen by virtue of the provisions of the Act and not by virtue of any contract between the employer and the workmen.

The Court added:

> The rights and obligations created by the standing orders derive their force not from the contract between the parties but from the provisions of the Act. They are statutory rights and obligation and not contractual rights and obligations.
>
> Whether certified standing orders govern the employees appointed before they become operative? This question has formed the subject-matter of controversy in number of decided cases.
>
> In *Guest Keen Williams Pvt. Ltd* v. *P J Sterling*, the Supreme Court held that the retiring age fixed by the standing orders did not apply to the workmen appointed before their coming into operation and for them, a higher age of retirement was fixed as at the time when they were employed, there was no age of retirement. But, in *Salem Erode Electricity Distribution Co.* v. *Their Employee Union* and *Agra Electric Supply Co*. v. *Alladin*, the Supreme Court made a departure from its earlier decision in *Guest Keen Williams Pvt. Ltd supra*. In the former case, the first standing orders were certified in 1947. The management wanted to modify the certified standing orders, on the subject of leave and holidays sometime in 1960 in respect of the new entrants preserving the old rules in respect of old workmen. The modification was negatived by the certifying officer and appellate authority. On

appeal, the Supreme Court upheld those orders observing that standing orders certified under the Act must be uniformly applied to all workmen and it was not permissible for an industrial establishment to have two sets of standing orders to govern the terms and conditions of its employees. In the latter case, the first standing orders of the company were certified in 1951. In these standing orders, the age of superannuation of employees was fixed at 55 years. Prior to 1951, there were no rules relating to superannuation. Three workmen who were appointed long before 1951 were retired from service in 1963 and 1964 on the ground that they had crossed the age of superannuation of 55 years. The workmen challenged the order retiring them from service on the ground that they were appointed before the making of the standing orders and were not governed by the rule of superannuation contained in them. The Supreme Court negatived the contention and ruled:

[O]nce the standing orders are certified and come into operation, they become binding on the employer and all the workmen presently employed as also those employed thereafter in the establishment conducted by that employer. It cannot possibly be that such standing orders would bind only those who are employed after they come into force and not those who were employed previously but are still in employment when they come into force.

Because in its view:

[I]f the standing orders were to bind only those who are subsequently employed, the result would be that there would be different conditions of employment for different classes of workmen, one set of conditions for those who are previously employed and another for those employed subsequently, and where they are modified, even several sets of conditions of service depending upon whether a workman was employed before the standing orders are certified or after, whether he was employed before or after a modification is made to any one of them and would bind only a few who are recruited after and not the bulk of them, who though in employment, were recruited previously. Such a result could never have been intended by the legislature, for that would render the conditions of service of workmen as indefinite and diversified, as before the enactment of the Act.

The aforesaid two decisions in *Salem Erode Electricity Distribution Co*. and *Agra Electric Supply Co*. were re-affirmed in *UP Electric Co*. v. *Workmen* wherein it was held 'that it was not intended by the legislature that different sets of conditions should apply to employees depending or whether a workman was employed before the standing order was certified of after, which would defeat the very object of the legislation'. Here it is relevant to add that while the *Guest Keen Williams Pvt. Ltd* was decided before the 1956 amendment, the remaining three later cases were decided after 1956 amendment which empowered the certifying officer to go into the reasonableness or fairness of standing orders.

In *Sudhir Chandra Sarkar* v. *Steel Company Ltd* reliance was placed on an earlier decision in *Agra Electric Supply Company Ltd* v. *Alladin*.

Again, the aforesaid view was reiterated in *Bharat Petroleum Corporation Ltd* v. *Maharashtra General Kamgar Union*. Here, the Supreme Court held that once the standing orders are certified, they constitute the conditions of service binding upon the management and the employees serving already and in employment or who may be employed after certification.

VIII. Posting of Standing Orders

The Act imposes a duty upon the employer to put up the text of certified standing orders in English language and in the language of the majority of workmen on special boards maintained for the purpose, at or near the entrance through which the majority of workmen enter the industrial establishment and in all departments thereof where the workmen are employed. This section has been held to be merely directory but non-compliance with the direction may result in the employer not succeeding in satisfying the industrial tribunal that there is proper case for termination of service or other disciplinary action.

13.3 DURATION AND MODIFICATION OF STANDING ORDER

I. Modification of standing orders

A. Law and Policy

The Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as IESOA) has provided a speedy and cheap remedy to workmen to get their conditions of employment determined in the prescribed manner. Thus, the IESOA provides remedy to both employees and employers who desire any modification in the certified standing orders. The Act provides that the standing orders finally certified under the IESOA cannot be modified except on agreement between the employer and the workmen or a trade union or other representative body of workmen before the expiry of 6 months from the date on which the standing orders or the last modifications became operative. From this, it is evident that the Act does not place any restriction on the right of the employer or workman to apply for modification except, of course, in respect of the time limit of 6 months. But even in respect of the time there is an exception; modification is permissible even before 6 months if there is an agreement between the parties.

The policy underlying Section 10 is that modification should not be allowed within 6 months from the date when the standing orders or the last modification thereof came into operation. The object of providing the time limit was that the standing orders or their modification should be given a fair trial. However, decided cases reveal that an application for modification may be entertained where: (*i*) a change of circumstances has occurred, or (*ii*) where experience of the working of the standing orders last certified result in inconvenience, hardship, anomaly, etc., or (*iii*) where some fact was lost sight of at time of certification, or (*iv*) where the

applicant feels that a modification will be more beneficial to the parties concerned or in the interest of the establishment.

B. Who May Apply for Modification

Prior to 1956, the right to apply for modification was conferred on the employer alone. This remedy was hardly satisfactory. In order to remove this hardship, the Act was amended in 1956. The amended Act, *inter alia*, permits both the employer and workman to apply for modification of the standing orders. The use of the word 'workman' in some cases led to doubt whether a body of workmen could also exercise this right. In order to clarify this position, the 1982-Amendment not only permits the employer and workmen but also trade unions or other representatives of the workmen to apply for modification of standing orders.

Under Section 10 (2), an employer or workmen or trade union or other representative body of the workmen can apply for modification of the standing orders. This shows that it can even be workmen. The workmen need not be in sizeable number. Trade union can also be an applicant. It need only be a trade union registered under the Trade Union Act. The Act does not say that it shall have recognition or a representative character with substantial majority. It is obviously so because notice on such application for modification shall necessarily be given by the workmen or any one of the trade union to other trade unions or such other representatives of workmen in terms of Section 5 (2) read with sub-section (3) of Section 10. If the applicant is not the sizeable majority and majority of the workmen represented by other trade unions object to it, necessarily, the certifying officer can ascertain the will of the workers. Thus if application for modification is made by a minority union, the majority union can object to such modification.

C. To Whom an Application for Modification May be Made

The application for modification must be made to the certifying officer.

D. Procedure for Modification

The application for modification of standing orders must be accompanied by 5 copies of the modification proposed to be made and where such modifications are proposed to be made by agreement between the employer and the workmen, a certified copy of that agreement shall be filed along with the application. Thus, the only way to give effect to the amendment was by resorting to the procedure of amendment contemplated by Section 10 of the Industrial Employment (Standing Orders) Act, 1946. Until the existing certified standing orders are suitably amended, the model standing orders could not be deemed to be applicable to the concerned establishment.

The aforesaid provisions of the Act shall apply in respect of an application for modification as they apply to the certification of first standing orders. But, the said provision is not applicable to an industrial establishment in respect of which the appropriate government is the government of the state of Gujarat or Maharashtra.

E. No Time-limit for Making Application

In *Indian Express Employees' Union* v. *Indian Express, Madurai, Ltd*, the Kerala High Court held that Section 19(2) does not lay down any time limit for making an application for modification of standing orders. The said application can be made after expiry of 6 months from the last modification. There is no bar to file an application for modification even after a decade.

F. Application of Principles of *Resjudicata*

It has been held by the Supreme Court decision in *SS Rly Co.* v. *Workers Union* that it is doubtful whether principle analogous to *resjudicata* can be applied for modification of standing orders.

G. Powers of Certifying Officer/Appellate Authority

In *Falcon Tyres Ltd* v. *Falcon Tyres Employees' Union Mysore*, the petitioner-management filed an application seeking for modification before the certifying officer. The petitioner-management, wanted inclusion of standing order 19(d) in the matter of medical discharge which reads as under:

All employees are required to undergo medical examination at the time of recruitment and shall be referred to the district medical board by the company from time to time to determine the medical fitness of the workman to carry out the job for which he is recruited. If the employee is found medically unfit by the district medical board he shall be liable to be discharged from the company's services. If an employee is covered under ESI, his discharge will be in accordance with Regulation 98 of the ESI (General) Regulation.

The draft clause was certified by the certifying officer. In appeal, the appellate authority modified the standing order certified by the certifying officer which read as under:

All employees are required to undergo medical examination at the time of recruitment and shall be referred to the medical board by the company from time to time to determine the medical fitness of the workmen to carry out the job for which he is recruited. If an employee is found medically unfit by the medical board to carry out the job for which he is recruited, then he shall be given an alternative suitable job protecting his last drawn salary.

On a writ petition filed against the order of the appellate authority, the Karnataka High Court held that the modification suggested by the appellate authority would virtually be an amendment directing the management to create an alternative suitable job in terms of the amendment. Such a modification cannot be termed as fair or reasonable in terms of the Industrial Employment (Standing Orders) Act, 1946. It cannot be said that the management should not have any concern for medically terminated employees but to compel an employer to create a post stands on a different footing rather than suggesting to the management to consider a case sympathetically in such cases, in the circumstances. The Court, therefore set aside the order of appellate authority and upheld the order of certifying officer.

II. Temporary Application of Model Standing Orders

Section 12 A deals with the temporary application of model standing orders to the industrial establishments. This provision applies between the period from the date of the application of the Act to an industrial establishment and to the date on which the certified standing orders come into operation, under Section 7 of the Act. Since it takes time in the certification process, Section 12-A provides:

Notwithstanding anything contained in Section 3 to 12, for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Act came into operation under Section 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of Section 9, sub-section (2) Section 13 and Section 13-A shall apply to such model standing orders as they apply to the standing orders so certified.

This Section provides that the model standing orders will be applicable to an industrial establishment during the period commencing on the date on which the Act becomes applicable to that establishment and the date on which the standing orders, as finally certified under this Act, came into operation. To hold that the Act would not apply to industrial establishments which came into existence after the date of enforcement of the Act, would exclude practically all industrial establishments which came into existence after the Act was enforced and which had not framed standing orders and got them certified under the Act. This would defeat the intent underlying the Act. Be that as it may, these provisions shall not apply to an industrial establishment in respect of which the appropriate government is (*i*) the government of state of Gujarat and (*ii*) the government of state of Maharashtra.

Where there are two categories of workers, namely, daily-rated and monthly-rated but the certified standing orders are in respect of daily-rated workmen only, then model standing orders may be made applicable to the monthly-rated workmen. The prescribed model standing orders have the same legal efficacy to govern the terms and conditions of service of industrial establishments to which the Act applies during the relevant period as the certified standing orders.

Check Your Progress

1. Under what conditions are standing orders certified?
2. Who are certifying officers under the IESOA?
3. To whom is the application for modification of standing orders made?

13.4 INTERPRETATION OF STANDING ORDERS

Let us now discuss the interpretation of standing orders.

I. Interpretation of Standing Orders

Section 13-A provides that if any question arises as to the application or interpretation of standing orders certified under the Act, such question can be referred to a labour court, by any employer or workman or a trade union or other representative body of workmen, and on such reference, the labour court constituted under the Industrial Disputes Act, 1947 'after giving the parties an opportunity of being heard', decide the question and such decision shall be final and binding on the parties.

The expression 'after giving the parties an opportunity of being heard' has been differently interpreted. In *Chipping and Painting Employers Association* v. *A T Zambre*, the Bombay High Court held that hearing the parties would not include leading evidence before the court for determination of disputed question of fact. On the other hand, in *M/s Deoria Sugar Mills Ltd* v. *Deputy Labour Commissioner*, the Allahabad High Court held that under Section 13, it is permissible for the workman concerned to produce any evidence which is relevant and related to workmen concerned and what was its probative value and whether it was sufficient to rebut the initial presumption in favour of the entry in the provident fund records.

Section 13-A provides only for reference of a question as to the application or interpretation of standing orders certified under the IESOA and the labour court is empowered to give its decision on the question so referred. The jurisdiction of the labour court is, therefore, confined to decide the question as to the application or interpretation of the standing orders which is referred to it. The decision of the labour court shall be final and binding on the parties.

In *Sri Ganpathi Mills Co. Ltd* v. *Presiding Officer, Labour Court*, the second respondent and two other workers beat a co-worker Velu for union activities and caused him injuries. Velu withdrew the complaint but the management after initiating disciplinary proceedings dismissed the second respondent on the charge of riotous and violent behaviour. The labour court found that there was no riotous and violent behaviour and directed reinstatement. Aggrieved by this order, the management filed a writ petition in the Madras High Court. It was contended that the misconduct as projected against the second respondent, was not an enumerated misconduct under the standing orders and hence, the charges themselves were not entertainable. In order to deal with the contention, Clause 24 K of the standing orders is relevant and which is to the following effect: 'drunkenness or riotous or disorderly behaviour during the working hours on any act subversive of discipline and/or efficiency'. The second respondent contended that the dispute was only between two workers and that it had taken place outside the premises of

the mill, and hence could not be a subject-matter of any disciplinary proceeding. The Court found that this was not a case of assault between the workers regarding their private affairs. Indeed the assault related to union activities. As regards the place of occurrence, standing order 24K does not refer to any geographical or territorial limitations. It is not difficult to perceive a situation where the misconduct of an employee could take place outside and far away from the premises. The test is whether the conduct affects or tends to affect the establishment. The Court held that there was no basis in the finding of the labour court that the charges against the second respondent were not established.

In *Ashok Leyland Ltd, Madras* v. *Presiding Officer, Second Additional Labour Court, Madras*, the management dismissed a workman, who was a checker in the store of the company for fraudulently acknowledging delivery of challans without actually receiving the articles amounting to ₹1,15,500/- after holding an inquiry. Similar charges were also levelled against the receipt clerk but he was not found guilty in the inquiry hence no action was taken against him. The workman raised an industrial dispute. The labour court directed reinstatement of the employee without back wages but with continuity of service. Aggrieved by the same, the management filed a writ petition and the employee also filed a petition questioning that part of the award which held him guilty of the charge levelled against him. It was, *inter alia*, contended that the order of dismissal did not disclose any aggravating circumstance in the conduct of the delinquent so as to justify an order of dismissal and hence, there was a violation of the standing orders. Rejecting the contention, the Madras High Court held that Standing Order No. 20 (*iii*) requires reference to be made to aggravating circumstances 'if any'. If there are no such aggravating circumstances, it is not possible to expect any reference to be made in the order of dismissal. The very nature of delinquency is serious enough without any necessity to refer to any aggravating circumstances to justify the order of dismissal. The Court, accordingly, set aside the order of the labour court and sustained the order of dismissal passed by management.

In *NDMC* v. *Mohd. Shamim*, the Delhi High Court held that under Section 13A of the Industrial Employment (Standing Orders) Act, 1946, only the labour court and not the industrial tribunal is empowered to entertain an application for interpretation of certified standing orders.

In *Madhya Pradesh State Electricity Board* v. *S K Yadav*, the Supreme Court considered the effect of a certified standing order which provided that any employee who desired to obtain leave of absence 'shall apply to the manager or the officer authorized by him. It shall be the duty of the manager or the officer to pass orders thereon on two days fixed for the purpose…' Here the employee applied for leave but he was not communicated any decision thereon. In view of this, he contended that in the absence of any order of rejection, it should be deemed that the leave was sanctioned. The Court rejected the contention and held that non-compliance would not mean that he had been granted leave and he could be held to be unauthorizedly absent. Non-compliance therewith would not vitiate the

ultimate order as the said provision must be held to be directory in nature and not mandatory.

A. Powers of the Labour Court Under Section 13-A

Does Section 13-A of the IESOA provide a remedy for the enforcement of rights and liabilities created by the standing orders certified under the Act? This question arises because it is the only Section in the Act which confers a right upon the employer and workmen to refer the question as to the application or interpretation of standing orders certified under the act to the labour court.

The Gujarat High Court has held that 'there are no words in Section 13-A which empower the labour court to grant redress for violation of the rights and obligations created under the standing orders.' The Court added that no power to grant relief by way of enforcement of the rights and obligations created by the standing orders can be implied merely from the conferment of the power on the labour court to decide any question as to the application or interpretation of standing orders which might be referred to it by the employer or workmen. The Court held that the labour court is not competent under Section 13-A to grant a declaration that the dismissal of the workmen concerned was illegal and that they continued in the employment of employer. Further, the Court ruled that labour court is empowered to direct the employer to pay to workman concerned his emoluments from the date of dismissal to the date of reinstatement.

The high courts are, however, divided on the issue whether it is possible for a discharged or dismissed workman to approach the labour court under Section 13-A to get an interpretation about certain provisions of the standing orders. While the Rajasthan and Bombay High Courts answered it in affirmative, the Calcutta High Court took a contrary view.

Labour courts under Section 13-A are, however, empowered to decide whether evidence is relevant to workman concerned and what is its probative value and whether it is sufficient to rebut the initial presumption in favour of the entry in the provident fund record.

The Supreme Court deprecated the tendency of some public sector undertakings to continue archaic standing orders reminiscent of the days of hire and fire in utter violation of the principles of natural justice. Thus, in *Workmen of Hindustan Steel* v. *Hindustan Steel Ltd*, the Supreme Court was invited to determine the scope of Standing Order No. 32 of the Hindustan Steel Ltd,—a public sector undertaking which enjoins the general manager to dismiss an employee by merely recording the reasons for dispensing with inquiry if it is inexpedient or against the interest of security to continue to employ the workman. The Court held that this provision of standing orders was violative of the principles of natural justice. In view of this, the Court emphasized the need to recast Standing Order No. 32 in order to bring it in conformity with the philosophy of the Constitution.

The question whether para 3 of the Standing Order No. 17 implies second opportunity given to the delinquent, was answered in the negative by the Supreme Court in *Associated Cement Co. Ltd* v. *T C Srivastava*. Speaking for the Court, Justice Tulzapurkar observed:

> On a plain reading of the relevant words, no second opportunity of showing cause against the proposed punishment is contemplated either expressly or by necessary implication. In other words, it is clear to us that the opportunity spoken by Para-3 of Standing Order No. 17 is the opportunity to be given to the delinquent to meet the charge framed against him.

In *M/s Glaxo Laboratories (I) Pvt. Ltd* v. *Presiding Officer, Labour Court*, a question arose 'whether the charges imputing misconduct as found by the appellant company would be covered by the Clauses 10, 16, 30 of the Standing Order 22'. The Supreme Court ruled that; the misconduct prescribed in standing orders which would attract a penalty should have a casual connection with the place of work as well as the time at which it is committed which would ordinarily be within the establishment and during duty hours. Even where the standing order is couched in a language which seeks to extend its operation far beyond the establishment, it would nonetheless be necessary to establish casual connection between the misconduct and the employment. This casual connection must be real and substantial, immediate and proximate and not remote. The Court pointed out that normal approach in law to the construction of a standing order is that it would apply to the behaviour on the premises where the workmen discharge their duties and during working hours of their work. It added that the well-established canon of construction is that penal provisions must receive strict construction. Referring to clause 10 of Standing Order 22, the Court observed that it must be strictly construed so as not to comprehend any misconduct committed anywhere irrespective of the time-place-content where and when it is committed and merely has some remote impact on the 'peaceful atmosphere in the establishment'. The expression 'committed within the premises of the establishment or in the vicinity thereof' are the words of limitation and a broad construction would make those words redundant. Clauses 16 and 30 form an integral part of the code and the setting and purpose underlying these two clauses must receive the same construction which Clause 10 received. Therefore, the charges against the workman would not be comprehended in Clauses 10, 16 and 30 of Standing Order 22 applicable to the appellant company.

The scope of section 11C of UP IDA which is almost *pari materia* to Section 13-A came to be interpreted and considered by the Supreme Court in the *UP State Road Transport Corporation* v. *UP Rajya Parivahan Karmchari Union*. In this case the Court, while setting aside the decision of the labour court in a case where it had declared a contractual workman to be treated as regular workman has held thus:

> In our opinion, the power of the labour court under Section 11-C of the UP Industrial Disputes Act or under Section 13A of the Industrial

> Employment (Standing Orders) Act, 1946 is much narrower than the power of the labour court on a reference under Section 10 of the Industrial Disputes Act which corresponds to Section 4-K of the U P Industrial Disputes Act.

The question about the jurisdiction of labour court under section 13-A of IESOA again came up for consideration in *Triveni Engineering & Indust*. v. *Jaswant Singh*.

In this case, respondent No. 1 who claimed to be a workman of the appellant was transferred during the course of his employment, but he did not join the place of transfer. Thereupon, the appellant terminated his services.

Being aggrieved by the order of termination of his services, he filed a writ petition in the Allahabad High Court challenging the transfer order as also the termination order issued by the appellant herein. He contended, *inter alia*, that the standing orders contain no provision for the transfer of a workman from one sugar factory to another, and therefore, his transfer was against the law. Therefore, his services could not have been terminated for not joining at a place of transfer.

The appellant on the other hand took a plea that the respondent was not a 'workman'. The High Court disposed of the writ petition leaving the respondent at liberty to move a representation before the labour commissioner, Kanpur, UP in term of Clause 'W' of the standing orders applicable. A representation in terms of the said order was filed by the respondent. It was contended before the labour commissioner by the appellant that respondent number 1 was not a workman, and therefore, the labour commissioner had no jurisdiction to adjudicate the representation under the provisions of U P Industrial Disputes Act, 1947, particularly in terms of Clause 'W' of the standing orders. The labour commission disposed of the petition, concluding that the question at hand related to whether respondent no. 1 was a workman under the UP Industrial Dispute Act, 1947. The labour commission held that the question whether the respondent number 1 was a workman or not could not be decided under clause 'W' of the standing orders, but instead should be determined by the labour court/industrial tribunal.

Aggrieved by the order of the labour commission, respondent number 1 filed a writ petition challenging the aforesaid conclusions. The learned single judge, however, dismissed the said writ petition.

Thereupon, the respondent filed a special appeal before the division bench of the Allahabad High Court. The division bench of the High Court set aside the orders of the labour commissioner as also of the single judge and remitted the matter back to the labour commissioner to decide the nature of service of respondent number 1 in accordance with law.

Being aggrieved by the said judgement and order, the special leave petition was filed in the Supreme Court. The Court ruled:

> Whether or not a person is a workman is a matter that relates primarily to facts and circumstances of the case. The same has nothing to do

> with the application and interpretation of the standing orders. What needs to be examined and looked into for deciding the aforesaid issue is the nature of job performed by the concerned person, duties and responsibilities vested in him and other such relevant material.

In view of above, the Court held that the division bench of the High Court committed a mistake in determining the said issue as ancillary to that of the applicability and interpretation of the standing order. Further, the order of termination also could not have been examined and scrutinized as such power and jurisdiction is not vested with the labour commissioner. The Court accordingly set aside the judgment and order passed by the division bench of Allahabad High Court and upheld and restored the orders of single judge as also of the labour commissioner.

B. Powers of the High Court

In *U P State Bridge Corpn*. v. *UP Rajya Setu Nigam S Karamchyari Sangh*, the respondent workmen did not attend their duties from certain date and presumably they had gone on strike in pursuance of their demands. Thereafter, the appellant corporation issued an order under clause L-2.12 of the certified standing orders of the company which provided:

> Any workman who remains absent from duty without leave or in excess of the period of leave originally sanctioned or subsequently extended for more than 10 consecutive days, he shall be deemed to have left the services of the corporation on his own accord, without notice, thereby terminating his contract of service with the corporation and his name will accordingly be struck off the rolls. It stated therein that if the workmen continued to absent themselves form work continuously for more than 10 days, it shall be presumed that they have left the services of the corporation without any notice and their services shall come to an end and their names shall be removed from the muster roll of the corporation.

However, when after repeated public notices the workmen did not resume duties, the corporation passed an order putting an end to the service of 168 workmen on the presumption that they had abandoned their services with the corporation on their own. However, no inquiry had been held before the services of the workmen were terminated. One such workman whose services were so terminated challenged the order of termination before the High Court, Lucknow bench. The Court dismissed the petition on the ground that the workman could raise an industrial dispute, if he so desired. Thereafter, the respondent union filed a second writ petition in the Allahabad High Court which was allowed.

A single judge of the Allahabad High Court held that (*i*) the word 'absence' in the standing orders did not by itself mean abandonment of service, since the employees were on strike, it was not their intention to abandon service. (*ii*) resorting to strike was neither misuse of leave nor overstaying the leave. (*iii*) standing order had not made a provision as to how a strike had to be dealt with (*iv*) the strike resorted to by the workman was not an illegal strike and also participation in

strike whether legal or illegal, did not and could not be said to amount to abandonment of service justified under Clause L-2.12 of the standing orders (*v*) at most, participation in illegal strike may amount to misconduct for which a punishment was provided under the standing orders after an inquiry. The Court accordingly held that the impugned order of termination was bad for non-compliance with principles of natural justice and, therefore, could not be sustained. A division bench of the High Court dismissed the petition. Aggrieved by this, the management filed an appeal in the Supreme Court. The Supreme Court held that the High Court had erred in exercising extraordinary jurisdiction under Article 226 of the Constitution by entertaining the writ petition of the respondent union at all. The Court observed that the dispute being an 'industrial dispute' both within the meaning of the Industrial Disputes Act as well as the UP Industrial Disputes Act, the rights and obligations sought to be enforced by the respondent union in the writ petitions were those created by the Industrial Disputes Act. In further added that in terms of the decision of the court in *Premier Automobile Ltd* v. *Kamlekar Shantaram Wadke* when the dispute relates to the enforcement of a right or an obligation created under the said Act, then the only remedy available is to get it adjudicated under the Act.

II. Penalties and Procedure

The enforcement of law implies that there are penalties, in case it is not complied with. The enactment of legislative measure is thus always accompanied by provision for specific penalties in case of violation of the provisions of the Act. Thus, Section 13(1) prescribes a fine extending to ₹5,000 on those employers who fail to submit draft standing orders under Section 3, or who modify their standing orders otherwise than in accordance with Section 10. If the offence is a continuing one, he shall be liable for further fine extending to ₹200 every day after the first during which the offence continues. The Act also imposes a fine extending to ₹100 upon employer who contravenes any provision for the finally certified standing orders under the Act. If the offence is a continuing one he shall be liable to a further fine extending to ₹25 everyday after the first during which the offence continues. But, in order to be prosecuted for the aforesaid offence, the prior sanction of the appropriate government is essential. However, no court inferior to that of a metropolitan magistrate or judicial magistrate of second class shall try any offence under this Section.

III Remedies for Enforcement of Rights and Liabilities Created under the IESOA

A. Civil Remedy under the IESOA

The penal provisions, however, do not foreclose the civil remedy. The IESOA does not, however, invest the labour court with the power to grant relief in enforcement of rights and liabilities created by the standing order which requires to be given to the workman, such redress cannot be given by the labour court under section 13a.

B. Remedy for Enforcement of Rights and Liabilities

Created under the Industrial Disputes Act, 1947: The Industrial Disputes Act, 1947, however, provides for relief to workmen affected due to violation of the provisions of certified standing orders. But, in order to do the same, an industrial dispute must be raised and the same must be referred by the appropriate government under Section 10 to the labour court for adjudication. Indeed, Section 7 read with Clause I of Schedule I empowers the labour court to adjudicate upon industrial disputes relating to 'the property or legality of an order passed by an employer under the standing orders'.

C. Under the Civil Procedure Code

Can a civil court entertain a suit with respect to dispute between employer and workman regarding enforcement of standing orders? This issue has been considered by the Supreme Court in *Rajasthan SRTC* v. *Mohar Singh*. The Court held that if the infringement of the standing orders is alleged, the civil court's jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the civil court's jurisdiction may not be held to be barred. If no right is claimed under a special statute in terms whereof the jurisdication of the civil court is barred, the civil court will have jurisdiction.

The above view was reiterated by a three-judge bench of the Supreme Court in *Rajasthan State Road Transport Corporation* v. *Bal Mukund Bairwa.* The Court ruled that if an employee intends to enforce his constitutional rights or a right under a statutory regulation, the civil court will have the necessary jurisdiction to try a suit. If, however, he claims his right and corresponding obligations only in terms of the provisions of the Industrial Employment (Standing Orders) Act, the civil court will have no jurisdiction. In view of this it would not be correct to contend that only because the conditions of service of workmen are otherwise governed by the standing orders certified under the 1946 Act, *ipso facto* the civil court will have no jurisdiction.

In *RSRTC* v. *Deen Dayal Sharma*, the Supreme Court held that it is the nature of right sought to be enforced which is decisive in determining whether the jurisdiction of civil court is barred or not.

IV. Inspection Machinery

The effectiveness of law lies in its implementation. Its non-enforcement is the negative aspect of instrument of social control. The IESOA does not contain any provision for inspection machinery for the enforcement of the provisions of the standing orders. However, it is significant to note that the twenty-fourth session of the Standing Labour Committee in its meeting on 13–14 February 1966 at New Delhi suggested that the IESOA should be amended to provide for the appointment of inspectors to enforce the provisions of the Act.

13.5 ROLE OF GOVERNMENT UNDER THE IESOA

Let us discuss the concept of appropriate government.

I. Concept of the 'Appropriate Government'

The appropriate government has an active role to play in respect of application, addition and exemption of industrial establishment, addition of items in the Schedule and rule-making power. Before we turn to discuss these powers, it is relevant to note the definition of 'appropriate government.' Section 2 (*b*) of the IESOA defines 'appropriate government' to mean:

in respect of industrial establishments under the control of the Central Government or a railway administration or in a major port, mine or oil field, the Central Government, and in all other cases, the state government.

A comparison of the aforesaid definition with that of the definition of the 'appropriate government' in Section 2 (*a*) of the Industrial Dispute Act, 1947, reveals that two definitions are not similar. It is, therefore, necessary to amend the aforesaid definition on the lines of the definition in IDA. This amendment is necessary for the sake of uniformity in the enforcement of law.

II. Delegation of Power

The appropriate government is empowered to delegate any power exercisable by it under the Act or any rules made thereunder, provided notification is issued in the official gazette specifying the matters in relation to which the powers are delegated and the conditions governing delegations. Such power may be delegated where appropriate government is Central Government to such officer or authority subordinate to the state government as may be specified in the notification. Where the appropriate government is a state government, by such officer or authority subordinate to it as may be specified in the notification.

III. Power of the Government to Make Rules

Section 15 (1) of the IESOA empower the appropriate government to make rules for carrying out the purposes of the Act. In order to exercise the power, the following conditions must be complied with: (*i*) notification must be published in the official gazette before making the rules; and (*ii*) the representatives of both the employers and workmen are consulted.

A. Power to Add Items in the Schedule

Under its rule-making powers, the appropriate government can (*i*) add additional matter to be included in the Schedule of the IESOA; (*ii*) prescribe the procedure to be followed in modifying standing orders certified under the Act. However, before any rules are framed under this provision, the appropriate government is required to consult both employers and workmen.

Decided cases reveal that enumeration of the items in the Schedule of the Act will not control or limit the width of the power conferred on the appropriate government by sub-section (1) of Section 15 and so, if it appears that the items added by the appropriate government have relation to conditions of employment; their addition cannot be challenged as being invalid in law. It is the discretion of the appropriate government to take a decision in respect of the matter whether or not such addition should be made. Hence, the reasonableness of such addition cannot be questioned because the power to decide which addition should be made has been delegated to the appropriate government by the Parliament. Further, having 'regard to the development of industrial law in this country during recent years, it cannot be said that gratuity or provident fund is not a term or condition of employment in industrial establishments'. Similarly, it relates the age of superannuation or retirement to the conditions of employment in industrial establishments.

B. Power to Frame Model Standing Orders

The Appropriate Government Act can also frame rules setting out model standing orders for the purposes of the Act. In pursuance of the power, the state governments have framed model standing orders applicable to workmen.

C. Power to Prescribe Procedure and Fee

The Act also empowers the appropriate government to (*i*) prescribe the procedure of certifying officers and appellate authorities; (*ii*) prescribe the fee which may be charged for copies of standing orders, and (*iii*) provide for any other matter which may be prescribed.

D. Approval of the Legislature

The Act requires that the approval of the legislature is essential whether the rules are framed by Central or state government. In case the rules are framed by the Central Government, it should be approved by both houses of the Parliament and where the rules are framed by a state government, they should be approved by the legislature of the state. The approval must be sought by laying down the same before the legislature concerned while it is in session for total period of 30 days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session immediately following the session or the two successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the legislature makes any modification in the rule or decides that rule should not be made, such rule shall be effective in modified form or be of no effect, as the case may be.

IV. Time-Limit for Completion of Domestic Inquiry

There is no provision in the IESOA fixing a time-limit for completion of disciplinary proceeding by the employer. However, Section 75 (1) of Industrial Relation Bill, 1978 for the first time provided:

Where any employee is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, such investigation or inquiry, or where there is an investigation followed by an inquiry, both the investigation and inquiry shall be completed ordinarily within a period of 90 days from the date of suspension.

The inclusion of aforesaid provisions in the IESOA, it is submitted, would protect the workers from undue harassment by the management.

V. Payment of Subsistence Allowance

Prior to 1982, there was no provision in IESOA for subsistence allowance in case of suspension of an employee by the employer. However, the model standing orders provide for graded system of payment of subsistence allowance. But the incorporation of this provision created problems in the absence of any provisions in the IESOA. Further, the standing orders in the state of Andhra Pradesh provided for a subsistence allowance of 50 per cent for 30 days, 75 per cent for 365 days and 100 per cent beyond 45 days. Similar provisions also exist in Gujarat, Maharashtra, U P, West Bengal and Kerala. But they differ in several respects. In order to meet this situation, Section 10-A was inserted in the Industrial Employment (Standing Orders) Amendment Act, 1981. Sub-section (1) of Section 10A provides for payment of subsistence allowance at the rate of 50 per cent of wages for the first 90 days of suspension, which would thereafter be increased to 75 per cent of such wages for the remaining period of suspension provided such workman is not responsible for delay in the completion of the disciplinary proceeding. Under sub-section 2 of Section 10A if 'any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer concerned may refer the dispute to the labour court constituted under the Industrial Disputes Act, 1947, within the local limits of whose jurisdiction in the industrial establishment wherein such workman is employed is situated and the labour court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.' 'Further, Section 10A(3) provides that notwithstanding anything contained in the governing provisions of this Section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any state are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistance allowance in that state.'

Scope of Section 10A(1)

The scope of the Section 10-A of the Industrial Employment (Standing Orders) Act, 1946 was examined in *Bibhu Deb Roy* v. *J M Savery*. The grievance of the plaintiff was that he was under suspension although there was no provision in the local staff manual of the company for subsistance allowance permissible under Section 10-A. The Gauhati High Court held that (*i*) The payment of subsistence allowance follows from suspension and an employee cannot be deprived of this

right; and (*ii*) For ends of justice, the principles laid down under Section 10-A of the Industrial Employment (Standing Orders) Act, 1946 should be followed in quantifying the payment of the amount of subsistence allowance per month.

In *Automative Manufacturing Ltd* v. *Member, Industrial Court*, the Bombay High Court while dealing with the scope of section 10A (1) held that the order of the Industrial Court to pay 100 per cent subsistence allowance could not be sustained in view of Section 10-A of the Industrial Employment (Standing Orders) Act, 1946. The Court, however, upheld the direction of the industrial court to pay subsistance allowance on revised rate of salary.

In *May & Baker Limited* v. *Kishore Jain Kishan Dass Icchaporie*, the workman was charge-sheeted for certain misconduct and was suspended from service. During the period of suspension, he was paid suspension allowance as per the provisions of certified standing orders applicable to the establishment. The workman filed an application before the labour court under Section 13-A, contending that he was entitled to subsistence allowance under the model standing orders, as amended under the Bombay Industrial Employment (Standing Orders) Rules, 1959, being more beneficial. The labour court rejected the contention. However, the single judge of the Bombay High Court, on a writ petition, reversed the order of the labour court. The division bench of the Bombay High Court, on appeal, held that the model standing orders, as also the certified standing orders are laws under the provisions of the Industrial Employment Standing Orders Act, 1946 and not provisions 'under any other law'. The Court accordingly held that Section 10-A superceded in relation to the payment of subsistence allowance over the provisions of the model standing orders.

Scope of Sub-section 2 of Section 10A

In *Vijaya Bank* v. *Shyamal Kumar Lodh* the Supreme Court determined the scope of sub-section 2 of section 10A (cited above). In this case the respondent, an employee of appellant bank, filed an application before the labour court, Dibrugarh constituted by the state government for an award computing his suspension/subsistence allowance. The appellant-bank challenged the jurisdiction of the labour court to adjudicate the dispute on the ground that the said court has not been specified by the Central Government under Section 33 C(2) of the IDA, and therefore it had no jurisdiction to entertain the application. The labour court rejected the contention. Thereupon, a writ petition was filed in High Court which held that the labour court at Dibrugarh had not been specified by the Central Government and therefore it had no jurisdiction to entertain the petition filed by the employee. It however, added that as the branch of the bank where the employee was working fell within the limits of jurisdiction of labour court in question, it shall have jurisdiction to decide the claim whether labour court at Dibrugarh could have entertained the application under Section 10 of the Industrial Employment (Standing Orders) Act. An appeal was then filed before the Supreme Court. The Court observed that from a plain reading of the Section 10 A(2) of the aforesaid Act, it

is evident that the labour court constituted under the Industrial Disputes Act, 1947 within the local limits of whose jurisdiction the establishment is situated, has jurisdiction to decide any dispute regarding subsistence allowance'. Referring to the case it observed: in the present case, undisputedly dispute pertains to subsistence allowance and the labour court where the workman had brought the action has been constituted under Section 7 of the Industrial Disputes Act, 1947 and further, the appellant bank is situated within the local limits of its jurisdiction. The workman had, though, chosen to file application under Section 33 C(2) of the Industrial Disputes Act but that shall not denude the jurisdiction of the labour court, if it otherwise possesses jurisdiction. The Court further observed incorrect label of the application and mentioning wrong provision neither confers jurisdiction nor denudes the court of its jurisdiction. Relief sought for, if it falls within the jurisdiction of the court, cannot be thrown out on the ground of its erroneous label or wrong mentioning of provision. The Court accordingly held that the labour court, Dibrugarh satisfies all the requirements to decide the dispute raised by the employee before it.

Effect of Non-payment of Subsistance Allowance

The Supreme Court in *Capt. M Paul Anthony* v. *Baharat Gold Nines Ltd* held that non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demolished and the salary is also paid to him at a reduced rate under the nickname of 'subsistence allowance' so that the employee may sustain himself. The act of non-payment of subsistence allowance can be linked to slow poisoning of the employee, who if not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve himself to death.

The Allahabad High Court in *Municipal Board, Amroha* v. *UP Public Service Tribunal* ruled that non-payment of subsistence allowance during period of suspension would not *ipso facto* render the order of removal invalid unless coupled with real prejudice.

The Rajasthan High Court in the case of *RSRTC* v. *Dharamvir Singh*, even liberalized the prejudice concept and probably felt that non-payment of subsistence allowance, other thing remaining the same, would only give a cause of action to the workman to claim the arrears of subsistence allowance not paid to him by initiating separate proceedings. On other limbs of this concept, if the employer denies the payment of subsistence allowance in the event of the workman not marking his attendance during period of suspension, it would not be proper.

Recommendation of the Second National Commission on Labour

The Commission has recommended that any worker who, pending completion of domestic inquiry, is placed under suspension, should be entitled to 50 per cent of his wage as subsistence allowance, and 75 per cent of wages for the period beyond

90 days if the period of suspension exceeds 90 days, for no fault of the worker, however the total period of suspension shall not, in any case, exceed one year. If as a result of continued absence of the worker at the domestic inquiry or if the inquiry and disciplinary action cannot be completed in time for reasons attributable wholly to the worker's default or intransigence, the employer will be free to conduct the inquiry *ex-parte* and complete the disciplinary proceedings based on such *ex-parte* inquiry and further, there would be no increase in subsistence allowance beyond 50 per cent for the period exceeding 90 days in such cases.

Check Your Progress

4. What does the effectiveness of law lie in?
5. What is the time limit for completion of disciplinary proceeding by the employer under the IESOA?

13.6 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. Section 4 requires that standing orders shall be certified under the Act if:
   (a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment;
   (b) they are otherwise in conformity with the provision of the Act; and
   (c) they are fair and reasonable.
2. The 'certifying officers' under the IESOA mean a labour commission or a regional labour commissioner, and includes any other officer appointed by the appropriate government, by notification in the official gazette, to perform all or any of the functions of certifying officer under the Act.
3. The application for modification of standing orders must be made to the certifying officer.
4. The effectiveness of law lies in its implementation.
5. There is no provision in the IESOA fixing a time-limit for completion of disciplinary proceeding by the employer. However, Section 75 (1) of Industrial Relation Bill, 1978 for the first time provided, 'Where any employee is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, such investigation or inquiry, or where there is an investigation followed by an inquiry, both the investigation and inquiry shall be completed ordinarily within a period of 90 days from the date of suspension.' The inclusion of aforesaid provisions in the IESOA, it is submitted, would protect the workers from undue harassment by the management.

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13.7 SUMMARY

- The Industrial Employment (Standing Orders) Act (hereinafter referred to as IESOA) requires every employer of an 'industrial establishment' to submit draft standing orders, i.e., 'rules relating to matters set out in the Schedule' proposed by him for adoption in his industrial establishment.
- Where model standing orders have been prescribed, that draft submitted by the employers must be in conformity with the model standing orders provided under Section 15 (2) (b) 'as far as it is practicable.'
- Under the Act, model standing orders are framed and as soon as the Act applies to an industrial establishment.
- The 'certifying officers' under the IESOA mean a labour commission or a regional labour commissioner, and includes any other officer appointed by the appropriate government, by notification in the official gazette, to perform all or any of the functions of certifying officer under the Act.
- Appellate authority means an authority appointed by the appropriate government by notification in the official gazette to exercise in such areas as may be specified in the notification of the functions of the appellate authority under the Act.
- Section 12 A deals with the temporary application of model standing orders to the industrial establishments.
- Section 13-A provides that if any question arises as to the application or interpretation of standing orders certified under the Act, such question can be referred to a labour court, by any employer or workman or a trade union or other representative body of workmen, and on such reference, the labour court constituted under the Industrial Disputes Act, 1947 'after giving the parties an opportunity of being heard', decide the question and such decision shall be final and binding on the parties.
- The Industrial Disputes Act, 1947, provides for relief to workmen affected due to violation of the provisions of certified standing orders.
- The appropriate government has an active role to play in respect of application, addition and exemption of industrial establishment, addition of items in the Schedule and rulemaking power.

13.8 KEY WORDS

- **Subsistence Allowance:** It refers to money paid to an employee traveling on company's business to cover cost of travel, lodging, meals, laundry, and other associated expenses.

- **Standing Order:** It means rules of conduct for workmen employed in industrial establishments.
- **Appellate Authority:** In every public authority, an officer who is senior in rank to the PIO has been designated to hear appeals. He/she is referred to as the Appellate Authority.

13.9 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. Write a short-note on the powers of the appellate authority according to the act.
2. What is the concept of appropriate government under the IESOA?

Long Answer Questions

1. Discuss the power of certifying officers according to the Industrial Employment (Standing Orders) Act, 1946.
2. Examine the procedure for the modification of standing orders.

13.10 FURTHER READINGS

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

Kuchhal, M C. 2012. *Business and Industrial Laws, Second Edition*. New Delhi: Vikas Publishing House.

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UNIT 14 TRADE UNION ACT, 1926

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Structure

14.0 INTRODUCTION

The Trade Unions Act, 1926, was enacted with a view to encourage the formation of permanent and stable trade unions and to protect their members from certain civil and criminal liabilities. The registration of a trade union is, however, not conclusive proof of its existence.

The Societies Registration Act, 1960, Co-operative Societies Act, 1912 and the Companies Act, 1956 do not apply to trade unions and registration thereof under any of these Acts is void ab initio.

14.1 OBJECTIVES

After going through this unit, you will be able to:

- Describe the complications of the definitions of the workmen
- Discuss how trade unions are formed by supervisors and managers
- Discuss the process of the mode of registration of trade unions
- Describe the rights, liabilities and penalties of trade unions

14.2 OVERVIEW OF THE ACT

Let us analyse the important aspects of the Trade Union Act, 1926.

I. The definition

Until 1926, no legislative attempt was made in India to delineate the contours of the expression 'trade union' or any of its synonyms. In 1926, Section 2(h) of the Trade Unions Act, 1926, *inter alia*, defines a 'trade union' to mean:

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> Any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions.

The dimensions of the aforesaid definition determine the permissible area of trade union activities. An analysis of the above definition reveals that a trade union: (*i*) must be a combination; (*ii*) such a combination should be either temporary or permanent; and (*iii*) should include any federation of two or more trade unions. Further, the definition recognizes that the objectives under its constitution are one or more of the following: (*a*) to regulate the relations: (*i*) between workmen and employers; (*ii*) among workmen; or (*iii*) among employers; (*b*) to impose restrictive conditions on the conduct of any trade or business. But it shall not affect: (*i*) an agreement between parties as to their own business; (*ii*) agreement as to employment; (*iii*) agreement in consideration of sale of the goodwill of a business or profession, trade or handicraft.

A delineation of the nature of trade unions requires description of: (1) the person who can become member of a trade union; (2) the place in relation to which trade unions are formed; and (3) the objectives of trade union. Let us now examine each of them.

II. Members of Trade Unions

The Trade Unions Act, 1926, does not specifically provide persons who may be a member of a trade union. However, the regulations framed under the Trade Unions Act, 1926 make it clear that the trade union may either be formed by workmen or employers. Section 2(h) of the Act and other provisions also confirm this view. It is therefore, necessary to delineate the contours of the expression 'workmen' and 'employers'.

A. Workmen

In the traditional sense, trade union is used to denote the union of workmen. Further, the workmen constitute the major part of a trade union. It is, therefore, necessary to ascertain its meaning. The term 'workmen' has not been independently defined in the Trade Unions Act. But in the definition of the term 'trade dispute' in Section 2(g), the definition of the term 'workmen' is found which says:

> All persons employed in the trade or industry whether or not in the employment of the employer with whom the trade disputes arise.

Broadly speaking, workmen must be: (*a*) persons; (*b*) employed; (*c*) in any trade or industry; (*d*) to do work.

The definition of the term 'workmen' however raises various problems: *First*, whether the persons other than those who are employed to do any skilled or unskilled, manual, supervisory, technical or clerical work may be covered within the meaning of the word 'workmen'? *Second*, whether the 'workmen' may be

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persons: (*a*) who are subjected to Army, Air Force or Navy Act; or (*b*) who are employed in the police service or as officers or other employees of a prison; or (*c*) who are employed mainly in a managerial or administrative capacity or exercise functions mainly of managerial 'nature'? *Third*, whether the gratuitous workers may indulge in trade unions? *Fourth*, whether there should be a contract of employment between 'employers' and 'workmen'? *Fifth*, whether there is any age restriction for becoming a member of a trade union? *Sixth,* whether *badli* workers are workmen? *Seventh*, can the dismissed, discharged or retrenched worker become member of a trade union? Let us turn to examine these issues.

As to the first, it is significant to note that the term 'workmen' as defined in the Trade Unions Act, 1926 has a wide coverage and is not merely confined to only those persons who are employed to do any manual, skilled, unskilled, supervisory, technical, operational or clerical work. In other words, all persons employed to do any kind of work may be covered within the definition of 'workmen' provided they are employed in any trade or industry.

The second problem may conveniently be divided in two categories. The employees of the first category, namely: (*i*) those who are subject to the Army, Air Force and Navy Act or (*ii*) those who are employed in the police service or as officers or other employees of a prison are not covered within the meaning of the term 'workmen' because they are not employed in the trade or industry. The employees of the second category, namely:

(*i*) those who are employed mainly in the managerial or administrative capacity; or

(*ii*) those who are employed in the supervisory capacity exercising functions mainly of managerial nature may conveniently be brought within the preview of 'workmen' provided they are employed in any 'trade' or 'industry'.

As to the third problem, it may be said that the definition of 'workmen' covers even gratuitous workers. It may, therefore, be possible for them under the Trade Unions Act, 1926 to be members of a trade union.

The fourth problem requires careful scrutiny. According to the definition, it is not necessary that there should be a contract of employment between the 'employer' and 'workmen'. Indeed, the courts emphasize that an 'employee' does not cease to be an 'employee' merely because he is employed through intermediaries.

Section 21 A (1) (*i*) of the Trade Unions Act, 1926 sheds sufficient light on the fifth problem. It, *inter alia*, provides that a person who has attained the age of 15 years, may be a member of registered trade unions unless the rules of trade unions provide otherwise. But a person who has not attained the age of 18 years can neither be an office-bearer of any such trade union nor can he be chosen a member of the executive of the unions.

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Formation of Trade Union by *Badli* Workers

As to the sixth problem, the Andhra Pradesh High Court in *Panyam Cement Employees Union* v. *Commr. of Labour* held that *badli* workmen are 'workmen' and, therefore, if management disapproves of a trade union of *badli* workers or discourages *badli* workers to join a trade union or denies voting right to *badli* workers, the same would amount to unfair labour practice.

The last problem requires due consideration. The definition unlike the Industrial Disputes Act, 1947, does not specifically include the dismissed, discharged or retrenched workers in its fold. Indeed, the use of the expression 'employed in the trade or industry' occurring in Section 2(g) of the Act and the expression union of workers engaged in industry occurring in Form A of the Central Trade Unions Regulation, 1938, make it highly doubtful whether the dismissed, discharged or retrenched workmen may be covered in the definition of 'workmen'.

It has been observed that the definition brings under the term 'trade union' not only combination of workmen, but also combination of employers such as employers' federation (or union of employers) or a combination of employers in any industry, imposing restrictions on the members in respect of prices to be charged from the customers, since one of the principal objects of the latter is to regulate the relations between employers. The Trade Unions Act, 1926, therefore, applies to employers' federation as it does to unions of workmen. It is, therefore, essential to know its coverage. The Trade Unions Act, 1926, does not define the term 'employer'. However, Section 2(g) of the Industrial Disputes Act, 1947, defines an 'employer' to mean: (*i*) in relation to an industry carried on by or under the authority of any department of the Central Government or a state government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department; (*ii*) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.

In Western India Automobile Association Ltd v. *Industrial Tribunal*, the Federal Court held that statutory definition is not exhaustive. Observed Justice Mahajan:

> In relation to (industries carried on by government or local authorities only) a definition has been given of the term 'employer' ... No attempt, however, was made to define the term 'employer' generally or in relation to other persons carrying on industries or running undertakings. The proposition has since been not challenged though, paradoxically, the provisions of the Industrial Disputes Act, 1947, have never been invoked to the industrial disputes arising in 'an industry carried on by or under the authority of any department of the Central or a State Government.'

An 'employer' does not cease to be an 'employer' merely because instead of employing workmen himself, he authorizes his agent or servant to employ them. However, in view of the provisions of Section 18 of the Industrial Disputes Act,

1947, the coverage of the expression 'employer' has been extended to include his heirs, successors and assignees.

Formation of a Trade Union by Supervisors and Managers

Can the supervisory officers and managers form a trade union under the Trade Unions Act? This question arose in *Government Tool Room and Training Centre's Supervisors and Officers Association* v. *Assistant Labour Commissioner*. In order to deal with the issue, the court referred to the provisions of Section 2(g) of the Trade Unions Act which defines trade dispute to mean any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment or the terms of employment or the conditions of labour, of any person and 'workmen' means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

It also referred to the provisions of Section 2(h) of the Trade Unions Act which defines 'trade union' to mean any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between the workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more trade unions.

While interpreting the scope of the aforesaid two definitions, the Karnataka High Court observed that the word 'workmen' under the Trade Unions Act includes all persons employed in a trade or industry. It is not a restricted definition as in any other enactment of labour laws. When the Act itself provides for wider definition and for a wider meaning, the court cannot narrow it down by its decision. That would be against the very object of the Trade Unions Act itself. The court added that it is a well-settled principle of law that two conditions are necessary for interpreting an earlier enactment in the light of the provisions of a later Act. They are: (*i*) the two Acts of the legislature must be in, *pari materia*, that is to say that they form a system or code of legislature; and (*ii*) the provisions in the earlier Act are ambiguous.

III. Trade or Industry

After having discussed as to who may become the members of a trade union, it is necessary to determine the area in which the trade unions operate. The arena of interaction of trade union is 'trade or industry'. The Trade Unions Act, 1926, however, does not spell out either the term 'trade' or 'industry'. A question, therefore, arises whether the Trade Unions Act, 1926 is in *pari materia* with the Industrial Disputes Act, 1947. The Madras High Court has answered it in negative because in its view, a comprehensive meaning of the term 'industry' was considered by the legislature in regard to the Industrial Disputes Act. On the other hand, the Andhra Pradesh and Karnataka High Courts have taken the view that two enactments are

in *pari materia* and that the expression 'trade or industry' in Section 2(g) of the Trade Unions Act carries the same meaning as the word 'industry' in Section 2 (j) of the Industrial Disputes Act. There is, however, no decision of the Supreme Court on this point. Section 2 (j) of the Industrial Disputes Act, 1947, however, defines the term, 'industry' to mean:

> any business, trade, undertaking, manufacture or calling of employers and includes any calling services, employment, handicraft, or industrial occupation or avocation of workmen.

The words used in the above definition are of very 'wide import'. It will be observed that the word 'industry' is wide enough to include 'trade' in its ambit. It will be further noticed that the definition is in two parts. The first part defines 'industry' with reference to employers and the other part defines it with reference to workers. The words occurring in the definition are vague and have given rise to several disputes. Courts and tribunals have, therefore, been called upon to interpret and apply the key expression on innumerable occasions.

An analysis of judicial response relating to the Trade Unions Act, 1926, reveals that the several organizations such as Employees' State Insurance Corporation, Provident Fund Organization, Fire Brigade Service, Devasthanam, CMT Institute have been held to be trade or industry under Section 2(j) of the Industrial Disputes Act, 1947 and the Trade Unions Act, 1926.

On the other hand, persons employed in the following are not employed in 'industry', *e.g.*, Raj Bhawan, educational institutions run by Ramakrishna Mission, Pasteur Institute of Southern India and the Council of Scientific and Industrial Research, sovereign or legal functions of the state and a temple managed by trustee of a Devaswom governed by the Hindu Religious and Charitable Endowment Act, 1951.

IV. Objectives of Trade Unions

The Trade Unions Act, 1926 prescribes the primary objectives of a trade union. The objectives are one or more of the following:

(*a*) to regulate the relations: (*i*) between employers; (*ii*) among workmen; or (*iii*) between employers and workmen.

(*b*) to impose restrictive conditions on the conduct of any trade or business.

The objectives for which the trade union is formed must comply with the aforesaid primary objects. In other words, the primary objects of trade unions determine whether the union is a trade union under the Act. The statutory provisions' for only primary objectives in the Act, however, suggests that there may be some objectives other than the primary objectives of trade unions. These objectives may be broadly categorized as follows: (*i*) economic objectives; (*ii*) political objectives; and (*iii*) social and welfare objectives. This view is fortified by the provisions of section 15 of the Act.

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V. Trade Dispute

'Trade dispute' is defined in Section 2(g) of the Trade Unions Act, 1926 to mean: any dispute between employers and workmen, or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and 'workmen' means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises:

Reading the definitions of 'trade union' and 'trade dispute' it is evident that any dispute, *inter alia*, between the employer and workmen connected with the employment or non-employment, terms of employment or conditions of labour of any person would be a trade dispute and the term 'workman' includes all persons employed in the trade or industry. Any dispute between *badli* workers and the management is also a trade dispute. It is for this reason that when there was a settlement between the Mazdoor Union and Panyam Cement Co. in June, 2000, both the parties agreed on certain terms regarding assured employment to *badli* workers. In that view of the matter, *badli* workers cannot be excluded from participating in the election to recognize the majority trade union. Any other interpretation would lead to *badli* workers to lurch in helpless state of suspended animation.

Check Your Progress

1. State the primary objectives of the Trade Unions Act.
2. What are the specifications of workmen?
3. What does the process of delineation of trade unions require?

14.3 REGISTRATION OF TRADE UNIONS

Let us analyse the process of registration of trade unions.

I. Legal status of registered trade unions

Every registered trade union is a body corporate by the name under which it is registered and 'shall have perpetual succession and a common seal with a power to sue and to be sued.' It is, however, not a statutory body. It is not created by statute or incorporated in accordance with the provisions of a statute. In other words, a registered trade union is neither an instrumentality nor an agency of the state discharging public functions or public duties. A registered trade union is an entity distinct from the members of which the trade union is composed. It has a power to contract and to hold property—both moveable and immovable and to sue and be sued by the name in which it is registered. It can institute a suit in *forma pauperis* within the meaning of Order XXXIII Rule 1 of the Civil Procedure

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Code. However, by mere registration of a trade union under the Trade Unions Act, the trade union does not become an authority under Article 12 of the Constitution of India. It continues to remain just a private body and all disputes relating to election of such a private body cannot be canvassed or challenged in a writ petition.

II. Compulsory versus voluntary registration

Under the Act, the registration of trade union is not compulsory but is merely voluntary. The question of voluntary registration is, however, debatable. Two conflicting views are discernible: (*i*) Compulsory registration would prove burdensome and expensive. It is felt that the present legal position should continue. The provisions of the Trade Union Act, 1926 itself affords legal status and protection to trade union members which will encourage trade unions to get themselves registered; (*ii*) The registration of trade unions should be made compulsory because all the unions shall be governed by the provisions of the Act and the rules framed thereunder in a similar manner. This view was also shared by the National Commission of Labour. The Commission is of the view that the registration of trade unions should be made compulsory 'because it will bring the application of same standards of obligation to all unions'. The second view seems to be better. It will not only bring the application of uniform standards and obligation to all unions, but would prevent 'fraud, embezzlement or deception practised upon members by unscrupulous persons.' Further, it will result in qualitative improvement of their organization and functioning. Moreover, it will strengthen the trade union movement. This should however, be done in stages. To begin with, it would be better if registration of trade unions is made compulsory for the purposes of their recognition.

III. Appointment of the registrar

Section 3 empowers the appropriate government to appoint a person to be the Registrar of Trade Unions. The appropriate government is also empowered to appoint as many additional and deputy registrars of trade unions as they think fit. Such persons will function under the superintendence and direction of the Registrar. He exercises such powers and functions of Registrar with local limit as may be specified. Where, however, additional or deputy registrar exercises the powers and functions of Registrar in the area within which a registered office of the trade union is situated, he shall be deemed to be Registrar.

IV. Mode of registration

A. Who may Apply: Minimum Membership of Trade Unions

***1. Legislative Response*:** Under section 4(1):

Any seven or more members of a trade union may by subscribing their names to the rules of trade union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the trade union under this Act.

Provided that no trade union of workmen shall be registered unless at least 10 per cent or 100 of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such trade union on the date of making application for registration:

Provided further that no trade union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

Where an application has been made under sub-section (1) for the registration of a trade union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the trade union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the trade union or have given notice in writing to the Registrar dissociating themselves from the application.

The Supreme Court in *Tirumala Tirupati Devasthanam* v. *Commissioner of Labour* held that any group of employees may be registered as a trade union under the Act for the purpose of regulating the relations between them and their employer or between themselves. The Court added:

It would be apparent from this definition that any group of employees which comes together primarily for the purpose of regulating the relations between them and their employer or between them and other workmen may be registered as a trade union under the Act. It cannot be disputed that the relationship between the appellant and the workmen in question is that of employer and employee. The registration of the association of the said workmen as a trade union under the Act has nothing to do with whether the said wings of the appellant are an 'industry' or not. We are, therefore, of the view that the High Court went into the said issue, although the same has not arisen before it. Since the findings recorded by the High Court on the said issue, are not germane to the question that falls for consideration before us, we express no opinion on the same and leave the question open.

Earlier in *Registrar of Trade Unions in Mysore* v. *M Mariswamy*, the employees of the Provident Fund Organization got themselves registered under the Trade Unions Act, 1926. This registration was subsequently withdrawn by the department resulting in litigation which ultimately reached the Karnataka High Court. It was held by the court that from the definition of the expression 'trade union', it could be a combination either of workmen or of employees or of both, provided it is formed primarily for one of the purposes mentioned in clause (h) of Section 2 of the Act. It is, therefore, possible to have a trade union consisting only of employers. The emphasis in Section 2(h) is on the purpose for which the union is formed and not so much on the persons who constitute the union. The court accordingly directed the registrar to register the petitioner who fulfils all other legal requirements in terms of the Trade Unions Act, 1926.

It is submitted that under the Trade Unions Act, 1926, both employers and workers can get themselves registered. Indeed both Section 2(g) and 2(h) refer to the employer. One may wish to add that the attention of the court was not drawn to this aspect.

2. Registration of Trade Unions in Unorganized Sector**:** The (Second) National Commission on Labour has recommended that trade unions of workers in the unorganized sector should be registered even where there is no employer–employee relationship or such relationship is not clear.

B. Whom to Apply?

Section 5 requires that every application for registration must be sent to the Registrar of Trade Unions.

C. Form for the Application

Section 5 requires that every application for registration made to the Registrar must be in Form 'A'. Further, every application must be accompanied with a statement of the following particulars, namely: (*a*) the names, occupations and addresses of the members making the application. However, in the case of a trade union of workmen, the names, occupations, and addresses of the place of work of the members of the trade union making the application. (*b*) the name of the trade union and the address of its head offices and (*c*) the title, names, ages, addresses and occupations of the office bearers of the trade union. Moreover, every application must be accompanied by a copy of rules. Such rules must comply with the items mentioned under Section 6 of the Act. Furthermore, the trade union of more than one year standing applying for registration is required to submit a general statement of its assets and liabilities in the prescribed manner to the Registrar. Moreover, a trade union (which had previously been registered by the registrar in any state) applying for registration is required to submit with its application a copy of certificate of registration granted to it and copies of entries to it to the Registrar of Trade Unions for the state.

D. Rules of a Trade Union

Section 6 provides that no union can be registered unless its constitution provides for the following items, namely:

(*a*) the name of the trade union;

(*b*) the objects for which the trade union has been established;

(*c*) the whole of the purposes for which the general funds of a trade union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;

(*d*) the maintenance of a list of the members of the trade union and adequate facilities for the inspection thereof by the office-bearers and members of the trade union;

(*e*) the admission of ordinary members who shall be persons actually engaged or employed in a trade or industry with which the trade union is connected and also the admission of the number of honorary or temporary members as office-bearers, required under Section 22 to form the executive of the trade union;

(*ee*) the payment of a minimum subscription by members of the trade union which shall not be less than:

(*i*) one rupee per annum for rural workers;

(*ii*) three rupees per annum for workers in other unorganized sectors; and

(*iii*) twelve rupees per annum for workers in any other case.

(*f*) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;

(*g*) the manner in which the rules shall be amended, varied or rescinded;

(*h*) the manner in which the members of the executive and the other office-bearers of the trade union shall be appointed and removed;

(*hh*) the duration of period being not more than three years, for which the members of the executive and other office-bearers of the trade union shall be elected;

(*i*) the safe custody of the funds of the trade union, and annual audit, in such a manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the trade union; and

(*j*) the manner in which the trade union may be dissolved.

(a) Nature and Scope of Rules

The existence of the aforesaid matters in the rules is a condition-precedent for the registration of the union. But, the fact that section 6 provides that no union can be registered unless its rule provides for these matters does not necessarily mean that rules relating to matters contained in section 6 acquire a statutory force. They have only contractual force. Thus, the rules framed by trade unions under section 6 of the Trade Unions Act, 1926 are rules meant for internal administration and, therefore, cannot create any statutory obligation upon the labour commissioner. It is like bye-laws of a cooperative society or rules framed by a society for securing registration under the Societies Registration Act, 1860.

(b) Amendment in Rules of the Trade Union when not Valid

In *B S V Hemantha Rao* v. *Deputy Registrar, Trade Union*, the Hyderabad Allwyn Workers' Union amended its rules appointing its president to act as election officer and empowering him to nominate all office-bearers, whereas this power is vested with the general body of the trade union. Even though such amendments

were registered by the Registrar of Trade Union, the Court held the amendments were contrary to the letter and spirit of the trade union and such a procedure allowing the president to nominate office bearers amounts to allowing a person to act as a judge in his own cause. Accordingly, it was held invalid.

(c) Scope of Section 6(e)

In *Bokajan Cement Corpn. Employees' Union* v. *Cement Corpn. of India Ltd*, a question arose whether on ceasing to be an employee, one would lose his right to continue as a member of the trade union. A single judge of the Guwahati High Court answered the question in negative. But a division bench of the High Court reversed the findings of the single judge on appeal. It was held that the right to continue as a member of the trade union continues only so long as an employee is actually employed. Thereupon, the union filed an appeal before the Supreme Court. The Court held that Section 6(e) only provides for admission of membership of those who are actually engaged or employed in industry as ordinary members so as to entitle a trade union to seek registration under the Act and not for automatic cessation of membership. It does not provide that on cessation of employment, an employee would cease to be a member.

A. Grounds for Cancellation of Registration

The registration of a trade union may be cancelled by the Registrar on any one of the following grounds: (*i*) that the certificate under Section 9 had been obtained by fraud or mistake; (*ii*) that the trade union had ceased to exist; (*iii*) that the trade union had 'wilfully' contravened any provision of the Act even after notice from the Registrar; (*iv*) that a trade union allowed any rule to continue in force which was inconsistent with any provisions of the Act; (*v*) that the trade union had rescinded any rule providing for any material provision which was required by Section 6; (*vi*) if the Registrar is satisfied that a registered trade union of workmen ceases to have the requisite number of members. However, not less than two months' previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the trade union before the certificate is withdrawn or cancelled otherwise than on the application of the trade union.

The grounds for cancellation of registration are open to several objections: *First*, the term 'wilful' is vague. In practice, it is found that trade unions do not submit their annual return. The section, however, requires that the default has to be 'wilful'. To establish a wilful default to the satisfaction of a court is difficult. In view of this, the (First) National Commission on Labour recommended that where the union failed to submit the annual return, its registration should be cancelled irrespective of whether the default is 'wilful' or otherwise. This recommendation should be implemented. *Second*, it is doubtful whether the materially defective return should be treated as 'return' under Section 10. In view of the prevailing

ambiguity, the National Commission on Labour suggested that 'materially defective return' should amount to a default and the union should be under an obligation to rectify mistakes within the prescribed period failing which the Registrar should be deemed not to have received the return.

The Registrar is not competent to cancel the registration of a trade union, without, in the first instance, giving to the trade union concerned two months' previous notice in writing, specifying the grounds on which he proposes to withdraw or cancel the certificate and giving an opportunity to the trade unions to show cause against proposed action. However, unlike Section 26(3) of the Industrial Relations Bill, 1978, there is no provision that 'while cancelling the certificate of registration of a trade union, the Registrar shall record the reasons of doing so and communicate the same in writing to the trade union concerned.' Once the Registrar cancels or withdraws the registration of a trade union, he has no power to quash that order. Further, he has no power to review it. Moreover, he has no power to withdraw it because of subsequent events.

B. Powers of the High Court in Respect of Cancellation of Registration

The Bombay High Court held that the High Court may exercise its powers under Article 226 of the Constitution where the cancellation of the registration of the trade union had been effected improperly. Again, the Gujarat High Court quashed the orders of Registrar where no show cause notice was given before cancellation of registration as required under Section 10(b).

C. Powers of the Registrar in Respect of Deregistration

The Registrar is empowered to cancel or withdraw certificate of registration on the application of the trade union. He is required to: (*i*) give an opportunity to trade unions except in case of applications of the concerned trade union; (*ii*) satisfy himself that any one of the grounds of cancellation of registration of such trade union exists; and (*iii*) make such order which he deems necessary.

The power of cancellation of registration of trade unions also confers an in-built power to withdraw the order of cancellation. Thus, the Registrar is also empowered to withdraw the order of cancellation on realization of mistake and on such order, the cancellation becomes *non-est*.

XV. Appeal

The Act confers right of appeal on persons aggrieved against an order of the Registrar (*i*) refusing to register a trade union; or (*ii*) withdrawing the certificate issued after registration; or (*iii*) cancelling the certificate of registration. The Act does not, however, define the word 'person'. In the absence of any definition, Section 3 (42) of the General Clauses Act may be taken into account for the purposes of the definition of the term. Thus, the 'person' includes a legal person

like a trade union. In an appeal by a trade union, whose certificate of registration is cancelled, no other trade union has a right to be impleaded as a party.

A. Appellate Forum

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The appeal may be filed (*a*) where the head office of the trade union is situated within the limits of a presidency town to the High Court; (*aa*) where the head office is situated in an area falling within the jurisdiction of a labour court or an industrial tribunal, to that court or tribunal, as the case may be; or (*b*) where the head office is situated in any other area to such court, not inferior to the court of an additional or assistant judge of a principal civil court of original jurisdiction, as the appropriate government may appoint in this behalf for the area.

The expression 'High Court' in Clause (*a*) above refers to the original side of the High Court and not to the appellate side. Further, the expression 'Presidency Town' in Clause (*a*) refers to the towns where the High Court has original civil jurisdiction. And Section 3(44) of the General Clauses Act (Act X of 1897) defines 'Presidency Town' to mean the total limits for the time being or the ordinary original civil jurisdiction of the High Court of Judicature at Calcutta, Madras or Bombay as the case may be. In cases where high courts are situated outside the presidency town, the high courts have no jurisdiction to entertain appeals under Section 11 (1) (*b*). In regard to such areas, any court not inferior to the court of an additional/assistant judge of the principal civil court of original jurisdiction, as the appropriate government may appoint in this behalf for that area, shall have jurisdictions.

B. Powers of The Appellate Court

The appellate court may either: (*i*) dismiss the appeal; or (*ii*) pass an order directing the Registrar to register trade unions and to issue a certificate of registration under Section 9; or (*iii*) set aside the order for withdrawal or cancellation of the certificate as the case may be. The Registrar is under an obligation to comply with such orders of the appellate authority.

C. Procedure to be Adopted by the Appellate Court

The appellate court shall, as far as practicable, follow the same procedure and have the same powers in respect of the appeal as vested in the civil court while trying a suit under the Code of Civil Procedure, 1908. Further, it may also determine from whom the whole or any part of the costs of appeal shall be recovered. Such costs shall be recovered as if they had been awarded in a civil suit under the code.

D. Second Appeal

The Act also confers a right of second appeal on persons whose appeals under Section 11(1) (b) have been dismissed. Such an appeal shall be filed in the high court, and the high court for the purposes of such an appeal has all the powers of the appellate court. However, no second appeal shall lie where the high court hears an appeal under Section 11(1) (a).

E. Time for Making an Appeal

The appeal under Section 11 must be filed within such time as may be prescribed under the rules for the purpose.

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XVI. The result of deregistration

A trade union whose certificate of registration has been withdrawn or cancelled, loses its status as a legal entity under the Act. Upon the cancellation of certificate of registration, the trade union and its members cease to enjoy the privileges of a registered trade union.

XVII. Re-registration

There is no provision in the Act for re-registration of a trade union whose registration has been cancelled. The National Commission on Labour, therefore, recommended that the Trade Union Act should provide that any application for re-registration from a union, (the registration of which has been cancelled) should not be entertained within six months of the date of cancellation of registrations. Perhaps in view of this recommendation, the Industrial Relations Bill, 1978 and the Trade Unions (Amendment) Bill, 1982 have provided for re-registration of a trade union.

14.4 RIGHTS, LIABILITIES, PROCEDURE AND PENALTIES

An office-bearer or member shall be entitled to inspect the account-books and the list of members at such time as may be provided for in the rules of the trade union. Further, a member not under fifteen has a right to execute all instruments and give all acquittance necessary to be executed or given under the rules. The scope of the legal rights and privileges was delineated in *Secretary of Tamil Nadu Electricity Board Accounts Subordinate Union* v. *Tamil Nadu Electricity Board*. In this case, two workmen of the Tamil Nadu Electricity Board were allowed to do the full time union work. However, the board refused to extend this facility after about four years. On a dispute being raised, the government referred it to the Labour Court for adjudication. The Labour Court held that this was a mere concession granted to the office-bearers of the union and was not a part of service condition. Aggrieved by this order the trade unions preferred a writ petition before the Madras High Court. Three issues were raised, namely:

(*i*) Whether the workman had a legal right to do trade union activity without attending to the office duties?

(*ii*) Whether the withdrawal of permission to do trade union work on full time basis would affect the service conditions? and

(*iii*) Whether it is a privilege within the meaning of Item 8 of Schedule IV of the Act? The Court answered all the issues in the negative and observed:

It is true that trade unionism has been recognized all over the world but that does not mean that an office-bearer or any trade union can claim, as of right, to do trade union activities during office hours. In a poor country like India, tax payers pay money not for the purpose of encouraging trade unionism, but in the fond and reverend hope that every person who is entrusted with the task of doing service will do his service. Whether he actually does service or not, there can be a fond expectation of the same. To allow one to claim as of light to do trade union activity without attending to the office duties, would in my opinion be an anachronism since it will amount to fleecing the tax payer in order to encourage the trade union activities. That is not the purpose for which the workman was appointed by the Electricity Board.

Penalties and Procedure

Failure to submit returns

In default or failure to submit returns or statements required under Section 28

(*i*) Every office-bearer

(*ii*) Other persons bound by the rules of the trade union to give or send the same,

(iii) If there is no such office-bearer or person, every member of the executive of the trade union shall be punishable with fine not exceeding ₹. 5. If the contravention is continued after conviction a further fine not exceeding ₹ 5 for each week during which the default was made shall be imposed. However, the aggregate fine shall not exceed ₹ 50.

The Act provides more deterrent punishment with a fine which may extend upto Rs. 500 upon persons wilfully making, or causing to be made any false entry in, or any omission from the general statement required by Section 28, or in or from any copy of rules or of alterations of rules or document sent to the Registrar under that Section.

Penalties for Supplying False Information Regarding Trade Unions

Quite apart from the penalties mentioned earlier, if any person with intent to deceive or with like intent gives (*i*) to any member of a registered trade union; or (*ii*) to any prospective member of such union any document purporting to be a copy of rules of a trade union or any alteration of such rules which he knows or has reason to believe that it is not a correct copy, or (*iii*) gives a copy of any rules of any unregistered trade union to any person on the pretence that such rules are the rules of a registered trade union shall be punishable with a fine which may extend to ₹ 200.

Cognizance of the Offence

Only a Presidency Magistrate or Magistrate of the first class can try any offence mentioned in Sections 31 and 32 of the Act. Similarly, no court shall take cognizance of any offence unless:

(i) A complaint has been made by the Registrar.

(ii) With his previous sanction by any person.

(iii) In the case of any offence under Section 32 by the person to whom such copy has been given.

(iv) The complaint is made within six months of the date on which the offence is alleged to have been committed.

Check Your Progress

4. What is the legal status of registered trade unions?
5. What is the result of deregistration?
6. How should the registration of trade unions be done in unorganised sector?

14.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The Trade Unions Act, 1926 prescribes the primary objectives of a trade union. The objectives are one or more of the following:
   (a) to regulate the relations: (i) between employers; (ii) among workmen; or (iii) between employers and workmen.
   (b) to impose restrictive conditions on the conduct of any trade or business.
2. Broadly speaking, workmen must be: (a) persons; (b) employed; (c) in any trade or industry; (d) to do work.
3. A delineation of the nature of trade unions requires description of: (1) the person who can become member of a trade union; (2) the place in relation to which trade unions are formed; and (3) the objectives of trade union.
4. Every registered trade union is a body corporate by the name under which it is registered and shall have perpetual succession and a common seal with a power to sue and to be sued.
5. A trade union whose certificate of registration has been withdrawn or cancelled, loses its status as a legal entity under the Act.
6. Section 5 requires that every application for registration must be sent to the registrar of Trade Unions in unorganised sector.

14.6 SUMMARY

NOTES

- Until 1926, no legislative attempt was made in India to delineate the contours of the expression 'trade union' or any of its synonyms.
- The dimensions of the aforesaid definition determine the permissible area of trade union activities. An analysis of the above definition reveals that a trade union: (*i*) must be a combination; (*ii*) such a combination should be either temporary or permanent; and (*iii*) should include any federation of two or more trade unions.
- The Trade Unions Act, 1926, does not specifically provide persons who may be a member of a trade union. However, the regulations framed under the Trade Unions Act, 1926 make it clear that the trade union may either be formed by workmen or employers.
- In the traditional sense, trade union is used to denote the union of workmen. Further, the workmen constitute the major part of a trade union. It is, therefore, necessary to ascertain its meaning.
- An 'employer' does not cease to be an 'employer' merely because instead of employing workmen himself, he authorizes his agent or servant to employ them. However, in view of the provisions of Section 18 of the Industrial Disputes Act, 1947, the coverage of the expression 'employer' has been extended to include his heirs, successors and assignees.
- The Trade Unions Act, 1926 prescribes the primary objectives of a trade union. The objectives are one or more of the following:
  (*a*) to regulate the relations: (*i*) between employers; (*ii*) among workmen; or (*iii*) between employers and workmen.
  (*b*) to impose restrictive conditions on the conduct of any trade or business.
- Every registered trade union is a body corporate by the name under which it is registered and shall have perpetual succession and a common seal with a power to sue and to be sued.
- Under the Act, the registration of trade union is not compulsory but is merely voluntary. The question of voluntary registration is, however, debatable.
- The registration of a trade union may be cancelled by the Registrar on any one of the following grounds: (*i*) that the certificate under Section 9 had been obtained by fraud or mistake; (*ii*) that the trade union had ceased to exist; (*iii*) that the trade union had 'wilfully' contravened any provision of the Act even after notice from the Registrar; (*iv*) that a trade union allowed any rule to continue in force which was inconsistent with any provisions of the Act; (*v*) that the trade union had rescinded any rule providing for any

material provision which was required by Section 6; (*vi*) if the Registrar is satisfied that a registered trade union of workmen ceases to have the requisite number of members.

- A trade union whose certificate of registration has been withdrawn or cancelled, loses its status as a legal entity under the Act. Upon the cancellation of certificate of registration, the trade union and its members cease to enjoy the privileges of a registered trade union.
- An office-bearer or member shall be entitled to inspect the account-books and the list of members at such time as may be provided for in the rules of the trade union. Further, a member not under fifteen has a right to execute all instruments and give all acquaintance necessary to be executed or given under the rules.

14.7 KEY WORDS

- **Trade dispute:** A dispute among workers or between employers and workers that is connected with the terms or conditions of employment.
- **Unorganised sector:** It consists of all unincorporated private enterprises owned by individuals or households engaged in the sale or production of goods and services operated on a proprietary or partnership basis and with less than ten total workers.

14.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. When can the registration of trade unions be cancelled?
2. State the dimensions of the definitions of the Trade Unions Act, 1926.
3. State the objectives of Trade Unions.
4. Write a short note on penalties for the failure to submit returns.

Long Answer Questions

1. Write a detailed note on complications of the definitions of the workmen.
2. How are trade unions formed by supervisors and managers? Discuss.
3. Discuss the process of the mode of registration of trade unions.
4. Describe the rights, liabilities and penalties of trade unions.

14.9 FURTHER READINGS

NOTES

Srivastava, S C. 2012. *Industrial Relations and Labour Laws, Sixth Edition.* New Delhi: Vikas Publishing House.

Kuchhal, M C. 2012. *Business and Industrial Laws, Second Edition*. New Delhi: Vikas Publishing House.

Padhi, P K. 2017. *Labour and Industrial Laws, Third Edition*. New Delhi: PHI Learning.